S. HRG. 104–869, Vol. VII

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

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Investigation of Whitewater Develop...

SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

ADMINISTERED BY THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

VOLUME VII

ON

WHETHER ADMINISTRATION OFFICIALS ENGAGED IN IMPROPER CONDUCT WITH RESPECT TO INVESTIGATIONS AND INQURIES RELATING TO WHITEWATER DEVELOPMENT CORPORATION, CAPITAL MANAGEMENT SERVICES, MADISON GUARANTY SAVINGS & LOAN, AND RELATED MATTERS

OCTOBER 10, 11, 12, 13, AND 17, 1995

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

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S. HRG. 104–869, Vol. VII

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

DEPOSITIONS

BEFORE THE

SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

ADMINISTERED BY THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

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104TH CONGRESS
1ST SESSION

S. RES. 120

Establishing a special committee administered by the Committee on Banking, Housing, and Urban Affairs to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority, and other related matters.

IN THE SENATE OF THE UNITED STATES

MAY 17 (legislative day, MAY 15), 1995

Mr. D'AMATO (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to

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RESOLUTION

Establishing a special committee administered by the Committee on Banking, Housing, and Urban Affairs to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority, and other related matters.

Resolved,

SECTION 1. ESTABLISHMENT OF SPECIAL COMMITTEE.

(a) ESTABLISHMENT.—There is established a special committee administered by the Committee on Banking, Housing, and Urban Affairs to be known as the "Special

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Committee to Investigate Whitewater Development Corporation and Related Matters" (hereafter in this resolution referred to as the "special committee").

(b) PURPOSES.—The purposes of the special committee are—

(1) to conduct an investigation and public hearings into, and study of, whether improper conduct occurred regarding the way in which White House officials handled documents in the office of White House Deputy Counsel Vincent Foster following his death;

(2) to conduct an investigation and public hearings into, and study of, the following matters developed during, or arising out of, the investigation and public hearings concluded by the Committee on Banking, Housing, and Urban Affairs prior to the adoption of this resolution—

(A) whether any person has improperly handled confidential Resolution Trust Corporation (hereafter in this resolution referred to as the "RTC") information relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation, including whether any person has improperly commu-

nicated such information to individuals referenced therein;

(B) whether the White House has engaged in improper contacts with any other agency or department in the Government with regard to confidential RTC information relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation;

(C) whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation;

(D) whether RTC employees have been improperly importuned, prevented, restrained, or deterred in conducting investigations or making enforcement recommendations relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation; and

(E) whether the report issued by the Office of Government Ethics on July 31, 1994, or related transcripts of deposition testimony—

(i) were improperly released to White House officials or others prior to their testimony before the Committee on Banking,

Housing, and Urban Affairs pursuant to Senate Resolution 229 (103d Congress); or

(ii) were used to communicate to White House officials or to others confidential RTC information relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation;

(3) to conduct an investigation and public hearings into, and study of, all matters that have any tendency to reveal the full facts about—

(A) the operations, solvency, and regulation of Madison Guaranty Savings and Loan Association, and any subsidiary, affiliate, or other entity owned or controlled by Madison Guaranty Savings and Loan Association;

(B) the activities, investments, and tax liability of Whitewater Development Corporation and, as related to Whitewater Development Corporation, of its officers, directors, and shareholders;

(C) the policies and practices of the RTC and the Federal banking agencies (as that term is defined in section 3 of the Federal Deposit Insurance Act) regarding the legal representa-

tion of such agencies with respect to Madison Guaranty Savings and Loan Association;

(D) the handling by the RTC, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Federal Savings and Loan Insurance Corporation of civil or administrative actions against parties regarding Madison Guaranty Savings and Loan Association;

(E) the sources of funding and the lending practices of Capital Management Services, Inc., and its supervision and regulation by the Small Business Administration, including any alleged diversion of funds to Whitewater Development Corporation;

(F) the bond underwriting contracts between Arkansas Development Finance Authority and Lasater & Company; and

(G) the lending activities of Perry County Bank, Perryville, Arkansas, in connection with the 1990 Arkansas gubernatorial election;

(4) to make such findings of fact as are warranted and appropriate;

(5) to make such recommendations, including recommendations for legislative, administrative, or

other actions, as the special committee may determine to be necessary or desirable; and

(6) to fulfill the constitutional oversight and informational functions of the Congress with respect to the matters described in this section.

SEC. 2. MEMBERSHIP AND ORGANIZATION OF THE SPECIAL COMMITTEE.

(a) MEMBERSHIP.—

(1) IN GENERAL.—The special committee shall consist of—

(A) the members of the Committee on Banking, Housing, and Urban Affairs; and

(B) the chairman and ranking member of the Committee on the Judiciary, or their designees from the Committee on the Judiciary.

(2) SENATE RULE XXV.—For the purpose of paragraph 4 of rule XXV of the Standing Rules of the Senate, service of a Senator as the chairman or other member of the special committee shall not be taken into account.

(b) ORGANIZATION OF SPECIAL COMMITTEE.—

(1) CHAIRMAN.—The chairman of the Committee on Banking, Housing, and Urban Affairs shall serve as the chairman of the special committee

(hereafter in this resolution referred to as the "chairman").

(2) RANKING MEMBER.—The ranking member of the Committee on Banking, Housing, and Urban Affairs shall serve as the ranking member of the special committee (hereafter in this resolution referred to as the "ranking member").

(3) QUORUM.—A majority of the members of the special committee shall constitute a quorum for the purpose of reporting a matter or recommendation to the Senate. A majority of the members of the special committee, or one-third of the members of the special committee if at least one member of the minority party is present, shall constitute a quorum for the conduct of other business. One member of the special committee shall constitute a quorum for the purpose of taking testimony.

(c) RULES AND PROCEDURES.—Except as otherwise specifically provided in this resolution, the special committee's investigation, study, and hearings shall be governed by the Standing Rules of the Senate and the Rules of Procedure of the Committee on Banking, Housing, and Urban Affairs. The special committee may adopt additional rules or procedures not inconsistent with this resolution or the Standing Rules of the Senate if the chairman and ranking

member agree that such additional rules or procedures are necessary to enable the special committee to conduct the investigation, study, and hearings authorized by this resolution. Any such additional rules and procedures shall become effective upon publication in the Congressional Record.

SEC. 3. STAFF OF THE SPECIAL COMMITTEE.

(a) APPOINTMENTS.—To assist the special committee in the investigation, study, and hearings authorized by this resolution, the chairman and the ranking member each may appoint special committee staff, including consultants.

(b) ASSISTANCE FROM THE SENATE LEGAL COUNSEL.—To assist the special committee in the investigation, study, and hearings authorized by this resolution, the Senate Legal Counsel and the Deputy Senate Legal Counsel shall work with and under the jurisdiction and authority of the special committee.

(c) ASSISTANCE FROM THE COMPTROLLER GENERAL.—The Comptroller General of the United States is requested to provide from the General Accounting Office whatever personnel or other appropriate assistance as may be required by the special committee, or by the chairman or the ranking member.

SEC. 4. PUBLIC ACTIVITIES OF THE SPECIAL COMMITTEE.

(a) IN GENERAL.—Consistent with the rights of persons subject to investigation and inquiry, the special committee shall make every effort to fulfill the right of the public and the Congress to know the essential facts and implications of the activities of officials of the United States Government and other persons and entities with respect to the matters under investigation and study, as described in section 1.

(b) DUTIES.—In furtherance of the right of the public and the Congress to know, the special committee—

(1) shall hold, as the chairman (in consultation with the ranking member) considers appropriate and in accordance with paragraph 5(b) of rule XXVI of the Standing Rules of the Senate, hearings on specific subjects, subject to consultation and coordination with the independent counsel appointed pursuant to chapter 40 of title 28, United States Code, in Division No. 94–1 (D.C. Cir. August 5, 1994) (hereafter in this resolution referred to as "the independent counsel");

(2) may make interim reports to the Senate as it considers appropriate; and

(3) shall make a final comprehensive public report to the Senate which contains—

(A) a description of all relevant factual determinations; and

(B) recommendations for legislation, if necessary.

SEC. 5. POWERS OF THE SPECIAL COMMITTEE.

(a) IN GENERAL.—The special committee shall do everything necessary and appropriate under the laws and the Constitution of the United States to conduct the investigation, study, and hearings authorized by section 1.

(b) EXERCISE OF AUTHORITY.—The special committee may exercise all of the powers and responsibilities of a committee under rule XXVI of the Standing Rules of the Senate and section 705 of the Ethics in Government Act of 1978, including the following:

(1) SUBPOENA POWERS.—To issue subpoenas or orders for the attendance of witnesses or for the production of documentary or physical evidence before the special committee. A subpoena or order may be authorized by the special committee or by the chairman with the agreement of the ranking member, and may be issued by the chairman or any other member of the special committee designated by the chairman, and may be served by any person designated by the chairman or the authorized member anywhere within or outside of the borders of the

United States to the full extent permitted by law. The chairman, or any other member of the special committee, is authorized to administer oaths to any witnesses appearing before the special committee. If a return on a subpoena or order for the production of documentary or physical evidence is incomplete or accompanied by an objection, the chairman (in consultation with the ranking member) may convene a meeting or hearing to determine the adequacy of the return and to rule on the objection. At a meeting or hearing on such a return, one member of the special committee shall constitute a quorum. The special committee shall not initiate procedures leading to civil or criminal enforcement of a subpoena unless the person or entity to whom the subpoena is directed refuses to produce the required documentary or physical evidence after having been ordered and directed to do so.

(2) COMPENSATION AUTHORITY.—To employ and fix the compensation of such clerical, investigatory, legal, technical, and other assistants as the special committee, or the chairman or the ranking member, considers necessary or appropriate.

(3) MEETINGS.—To sit and act at any time or place during sessions, recesses, and adjournment periods of the Senate.

(4) HEARINGS.—To hold hearings, take testimony under oath, and receive documentary or physical evidence relating to the matters and questions it is authorized to investigate or study. Unless the chairman and the ranking member otherwise agree, the questioning of a witness or a panel of witnesses at a hearing shall be limited to one initial 30-minute turn each for the chairman and the ranking member, or their designees, including majority and minority staff, and thereafter to 10-minute turns by each member of the special committee if 5 or more members are present, and to 15-minute turns by each member of the special committee if fewer than 5 members are present. A member may be permitted further questions of the witness or panel of witnesses, either by using time that another member then present at the hearing has yielded for that purpose during the yielding member's turn, or by using time allotted after all members have been given an opportunity to question the witness or panel of witnesses. At all times, unless the chairman and the ranking member otherwise agree, the questioning

shall alternate back and forth between members of the majority party and members of the minority party. In their discretion, the chairman and the ranking member, respectively, may designate majority or minority staff to question a witness or a panel of witnesses at a hearing during time yielded by a member of the chairman's or the ranking member's party then present at the hearing for his or her turn.

(5) TESTIMONY OF WITNESSES.—To require by subpoena or order the attendance, as a witness before the special committee or at a deposition, of any person who may have knowledge or information concerning any of the matters that the special committee is authorized to investigate and study.

(6) IMMUNITY.—To grant a witness immunity under sections 6002 and 6005 of title 18, United States Code, provided that the independent counsel has not informed the special committee in writing that immunizing the witness would interfere with the ability of the independent counsel successfully to prosecute criminal violations. Not later than 10 days before the special committee seeks a Federal court order for a grant of immunity by the special committee, the Senate Legal Counsel shall cause to be de-

livered to the independent counsel a written request asking the independent counsel promptly to inform the special committee in writing if, in the judgment of the independent counsel, the grant of immunity would interfere with the ability of the independent counsel successfully to prosecute criminal violations. The Senate Legal Counsel's written request of the independent counsel required by this paragraph shall be in addition to all notice requirements set forth in sections 6002 and 6005 of title 18, United States Code.

(7) DEPOSITIONS.—To take depositions and other testimony under oath anywhere within the United States, to issue orders that require witnesses to answer written interrogatories under oath, and to make application for the issuance of letters rogatory. All depositions shall be conducted jointly by majority and minority staff of the special committee. A witness at a deposition shall be examined upon oath administered by a member of the special committee or an individual authorized by local law to administer oaths, and a complete transcription or electronic recording of the deposition shall be made. Questions shall be propounded first by majority staff of the special committee and then by minority staff of the

special committee. Any subsequent round of questioning shall proceed in the same order. Objections by the witness as to the form of questions shall be noted for the record. If a witness objects to a question and refuses to answer on the basis of relevance or privilege, the special committee staff may proceed with the deposition, or may, at that time or at a subsequent time, seek a ruling on the objection from the chairman. If the chairman overrules the objection, the chairman may order and direct the witness to answer the question, but the special committee shall not initiate procedures leading to civil or criminal enforcement unless the witness refuses to answer after having been ordered and directed to answer.

(8) DELEGATIONS TO STAFF.—To issue commissions and to notice depositions for staff members to examine witnesses and to receive evidence under oath administered by an individual authorized by local law to administer oaths. The special committee, or the chairman with the concurrence of the ranking member, may delegate to designated staff members of the special committee the power to issue deposition notices authorized pursuant to this paragraph.

(9) INFORMATION FROM OTHER SOURCES.—To require by subpoena or order—

(A) any department, agency, entity, officer, or employee of the United States Government;

(B) any person or entity purporting to act under color or authority of State or local law; or

(C) any private person, firm, corporation, partnership, or other organization;

to produce for consideration by the special committee or for use as evidence in the investigation, study, or hearings of the special committee, any book, check, canceled check, correspondence, communication, document, financial record, paper, physical evidence, photograph, record, recording, tape, or any other material relating to any of the matters or questions that the special committee is authorized to investigate and study which any such person or entity may possess or control.

(10) RECOMMENDATIONS TO THE SENATE.—To make to the Senate any recommendations, by report or resolution, including recommendations for criminal or civil enforcement, which the special committee may consider appropriate with respect to—

(A) the willful failure or refusal of any person to appear before it, or at a deposition, or

to answer interrogatories, in compliance with a subpoena or order;

(B) the willful failure or refusal of any person to answer questions or give testimony during the appearance of that person as a witness before the special committee, or at a deposition, or in response to interrogatories; or

(C) the willful failure or refusal of—

(i) any officer or employee of the United States Government;

(ii) any person or entity purporting to act under color or authority of State or local law; or

(iii) any private person, partnership, firm, corporation, or organization;

to produce before the special committee, or at a deposition, or at any time or place designated by the committee, any book, check, canceled check, correspondence, communication, document, financial record, paper, physical evidence, photograph, record, recording, tape, or any other material in compliance with any subpoena or order.

(11) CONSULTANTS.—To procure the temporary or intermittent services of individual consultants, or organizations thereof.

(12) OTHER GOVERNMENT PERSONNEL.—To use, on a reimbursable basis and with the prior consent of the Government department or agency concerned, the services of the personnel of such department or agency.

(13) OTHER CONGRESSIONAL STAFF.—To use, with the prior consent of any member of the Senate or the chairman or the ranking member of any other Senate committee or the chairman or ranking member of any subcommittee of any committee of the Senate, the facilities or services of the appropriate members of the staff of such member of the Senate or other Senate committee or subcommittee, whenever the special committee or the chairman or the ranking member considers that such action is necessary or appropriate to enable the special committee to conduct the investigation, study, and hearings authorized by this resolution.

(14) ACCESS TO INFORMATION AND EVIDENCE.—To permit any members of the special committee, staff director, counsel, or other staff members or consultants designated by the chairman

, or the ranking member, access to any data, evidence, information, report, analysis, document, or paper—

(A) that relates to any of the matters or questions that the special committee is authorized to investigate or study under this resolution;

(B) that is in the custody or under the control of any department, agency, entity, officer, or employee of the United States Government, including those which have the power under the laws of the United States to investigate any alleged criminal activities or to prosecute persons charged with crimes against the United States without regard to the jurisdiction or authority of any other Senate committee or subcommittee; and

(C) that will assist the special committee to prepare for or conduct the investigation, study, and hearings authorized by this resolution.

(15) REPORTS OF VIOLATIONS OF LAW.—To report possible violations of any law to appropriate Federal, State, or local authorities.

(16) EXPENDITURES.—To expend, to the extent that the special committee determines necessary

and appropriate, any money made available to the special committee by the Senate to carry out this resolution.

(17) TAX RETURN INFORMATION.—To inspect and receive, in accordance with the procedures set forth in sections 6103(f)(3) and 6104(a)(2) of the Internal Revenue Code of 1986, any tax return or tax return information, held by the Secretary of the Treasury, if access to the particular tax-related information sought is necessary to the ability of the special committee to carry out section 1(b)(3)(B).

SEC. 6. PROTECTION OF CONFIDENTIAL INFORMATION.

(a) NONDISCLOSURE.—No member of the special committee or the staff of the special committee shall disclose, in whole or in part or by way of summary, to any person other than another member of the special committee or other staff of the special committee, for any purpose or in connection with any proceeding, judicial or otherwise, any testimony taken, including the names of witnesses testifying, or material presented, in depositions or at closed hearings, or any confidential materials or information, unless authorized by the special committee or the chairman in concurrence with the ranking member.

(b) STAFF NONDISCLOSURE AGREEMENT.—All members of the staff of the special committee with access to

confidential information within the control of the special committee shall, as a condition of employment, agree in writing to abide by the conditions of this section and any nondisclosure agreement promulgated by the special committee that is consistent with this section.

(c) SANCTIONS.—

(1) MEMBER SANCTIONS.—The case of any Senator who violates the security procedures of the special committee may be referred to the Select Committee on Ethics of the Senate for investigation and the imposition of sanctions in accordance with the rules of the Senate.

(2) STAFF SANCTIONS.—Any member of the staff of the special committee who violates the security procedures of the special committee shall immediately be subject to removal from office or employment with the special committee or such other sanction as may be provided in any rule issued by the special committee consistent with section 2(c).

(d) STAFF DEFINED.—For purposes of this section, the term "staff of the special committee" includes—

(1) all employees of the special committee;

(2) all staff designated by the members of the special committee to work on special committee business;

(3) all Senate staff assigned to special committee business pursuant to section 5(b)(13);

(4) all officers and employees of the Office of Senate Legal Counsel who are requested to work on special committee business; and

(5) all detailees and consultants to the special committee.

SEC. 7. RELATION TO OTHER INVESTIGATIONS.

(a) PURPOSES.—The purposes of this section are—

(1) to expedite the thorough conduct of the investigation, study, and hearings authorized by this resolution;

(2) to promote efficiency among all the various investigations underway in all branches of the United States Government; and

(3) to engender a high degree of confidence on the part of the public regarding the conduct of such investigation, study, and hearings.

(b) SPECIAL COMMITTEE ACTIONS.—To carry out the purposes stated in subsection (a), the special committee is encouraged—

(1) to obtain relevant information concerning the status of the investigation of the independent counsel, to assist in establishing a hearing schedule for the special committee; and

(2) to coordinate, to the extent practicable, the activities of the special committee with the investigation of the independent counsel.

SEC. 8. SALARIES AND EXPENSES.

A sum equal to not more than $950,000 for the period beginning on the date of adoption of this resolution and ending on February 29, 1996, shall be made available from the contingent fund of the Senate out of the Account for Expenses for Inquiries and Investigations for payment of salaries and other expenses of the special committee under this resolution, which shall include not more than $750,000 for the procurement of the services of individual consultants or organizations thereof, in accordance with section 5(b)(11). Payment of expenses shall be disbursed upon vouchers approved by the chairman, except that vouchers shall not be required for the disbursement of salaries paid at an annual rate.

SEC. 9. REPORTS; TERMINATION.

(a) COMPLETION OF DUTIES.—

(1) IN GENERAL.—The special committee shall make every reasonable effort to complete, not later than February 1, 1996, the investigation, study, and hearings authorized by section 1.

(2) EVALUATION OF PROGRESS.—The special committee shall evaluate the progress and status of

41-377 97-2

the investigation, study, and hearings authorized by section 1 and, not later than January 15, 1996, make recommendations with respect to the authorization of additional funds for a period following February 29, 1996. If the special committee requests the authorization of additional funds for a period following February 29, 1996, the Majority Leader and the Democratic Leader shall meet and determine the appropriate timetable and procedures for the Senate to vote on any such request.

(b) FINAL REPORT.—

(1) SUBMISSION.—The special committee shall promptly submit a final public report to the Senate of the results of the investigation, study, and hearings conducted by the special committee pursuant to this resolution, together with its findings and any recommendations.

(2) CONFIDENTIAL INFORMATION.—The final report of the special committee may be accompanied by such confidential annexes as are necessary to protect confidential information.

(3) CONCLUSION OF BUSINESS.—After submission of its final report, the special committee shall promptly conclude its business and close out its affairs.

(c) RECORDS.—Upon the conclusion of the special committee's business and the closing out of its affairs, all records, files, documents, and other materials in the possession, custody, or control of the special committee shall remain under the control of the Committee on Banking, Housing, and Urban Affairs.

SEC. 10. COMMITTEE JURISDICTION AND RULE XXV.

The jurisdiction of the special committee is granted pursuant to this resolution, notwithstanding the provisions of paragraph 1 of rule XXV of the Standing Rules of the Senate relating to the jurisdiction of the standing committees of the Senate.

○

DEPOSITION OF CLARK W. BLIGHT
IN RE: S. RES. 120

TUESDAY, OCTOBER 10, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of CLARK W. BLIGHT, called for examination pursuant to notice of deposition, at 9:35 a.m. in Room 534 of the Dirksen Senate Office Building before JANE W. BEACH, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, ESQ.
Majority Associate Special Counsel
ALICE S. FISHER, ESQ.
Majority Deputy Special Counsel
NEAL E. KRAVITZ, ESQ.
Minority Principal Deputy Special Counsel
JAMES S. PORTNOY, ESQ.
Minority Associate Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

FRED W. GIBSON, JR., ESQ.
Senior Counsel
Office of the Inspector General
Resolution Trust Corporation
1735 North Lynn Street
Room 1132
Rosslyn, Virginia 22209
On behalf of the Deponent.

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Clark W. Blight

DEPOSITION NUMBER	IDENTIFIED
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PROCEEDINGS

(9:35 a.m.)

MR. GIBSON: The RTC Office of Inspector General has produced documents to the Senate Special Committee which may be discussed during the course of this deposition.

For the record, the Office of Inspector General reasserts any privileges claimed by it or on behalf of any other agency with respect to public disclosure of these documents under the Freedom of Information Act, Privacy Act or as otherwise enumerated in the materials transmitting documents to the Special Committee.

Thank you.

MR. O'CALLAGHAN: Mr. Blight, my name's Michael O'Callaghan. I'm Associate Special Counsel for the Majority of the Special Committee, Banking Committee to conduct the investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Incorporated, the Arkansas Development Finance Authority, and other related matters.

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To my left is also an Associate Special Counsel for the Majority, Alice Fisher.

This deposition is conducted pursuant to Senate Resolution 120. The Resolution establishes a Special Committee administered by the Banking Committee to conduct an investigation involving the Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Incorporated, the Arkansas Development Finance Authority and other related matters.

Section 1(b)(2)(e) of Senate Resolution 120 authorizes the investigation and public hearings into whether the report issued by the Office of Government Ethics on July 31, 1994, or related transcripts of deposition testimony 1) were either improperly released to the White House Officials or others, prior to their testimony before the Committee on Banking, Housing and Urban Affairs pursuant to Resolution 229, or 2) were used to communicate to House officials or to others, confidential RTC information relating to Madison Guaranty Savings & Loan Association or Whitewater Development

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Corporation.
And this will, in part, be the focus of today's deposition.
Is it true that you were requested to testify on October 6th, 1995?
MR. BLIGHT: Yes.
MR. O'CALLAGHAN: I was just stating for the record that you were requested to testify on October 6, 1995.
MR. BLIGHT: Yes.
MR. O'CALLAGHAN: This is a deposition in advance of public hearings which will be held in November, and there's a chance that you will be asked to testify at that hearing. We'll let you know if that's necessary.
Today, we will ask you a series of questions, and I'll ask you to testify under oath.
If you don't understand a question, let me know and I will rephrase the question.
If you need a break, just let me know and we'll be able to accommodate you.
The stenographer to my right will prepare

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a record of questions and answers. The deposition will be treated as Committee confidential until the commencement of the hearings.
Prior to the hearings, you will receive a letter from the Committee telling you that you may come and sit down to review the transcripts of your deposition and make notes of any corrections or transcription on errata sheets.
MR. BLIGHT: It won't be sent to me. I'll have to come up here?
MS. FISHER: Right.
MR. O'CALLAGHAN: What was the question?
MS. FISHER: It won't be sent, the transcript won't be sent to him. You can come and review it, four, if you're going to be called at the hearing, four days prior to giving testimony at a public hearing, you'll be allowed to come up and pick up a copy of your transcript and take it with you.
MR. KRAVITZ: Let me --
MR. O'CALLAGHAN: Sure, go ahead.
MR. KRAVITZ: The procedures this past summer were that all witnesses who were deposed were

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given an opportunity to come to the Senate in a confidential location, review their transcript and prepare an errata sheet if appropriate, and that all witnesses who were then called to testify at the actual public hearings were provided copies of their testimony, of their deposition testimony four days before their hearing testimony, as long as they agreed not to share the transcript with anyone other than their lawyers.

As far as I know, procedures for this upcoming set of hearings have not been set so it's conceivable that they will differ from this past summer's procedures. It's speculative at this point.

MS. FISHER: We'll let you know. You'll receive a letter.

MR. BLIGHT: Yes. Well, I just wanted to review it on the chance there's something, I misstate something or have a recollection afterward.

MR. KRAVITZ: There will definitely be a chance to review it.

MR. O'CALLAGHAN: In addition, you may be represented by counsel. Are you represented by

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counsel today?

MR. BLIGHT: Yes. Fred Gibson, who is our IG counsel.

MR. O'CALLAGHAN: Thank you.

Counsel, you may object on grounds of privilege or relevance. The Committee Chairman may rule on objections where the witness refuses to answer a question.

MR. O'CALLAGHAN: Would you swear the witness please?

Whereupon,

CLARK W. BLIGHT

was called as a witness herein, and having been first duly sworn, was examined and testified as follows:

MR. KRAVITZ: Mike, can I just interrupt for one second, just so our procedures are clear since Mike didn't go into this.

We do all of our depositions on a bipartisan basis, and so the majority counsel has an opportunity to ask questions initially, and then I, on behalf of the minority will have an opportunity to ask questions after that. And then if your counsel

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desires, he can ask questions as well.

EXAMINATION

BY MR. O'CALLAGHAN:

Q Could you please state and spell your full name for the record?

A Clark, C-L-A-R-K W. Blight, B-L-I-G-H-T.

Q What is your present business address?

A 1735 North Lynn Street, Rosslyn, Virginia 22209.

Q And who are you presently employed by?

A The Office of Inspector General of the Resolution Trust Corporation.

Q What is your position there?

A Assistant Inspector General for Investigation.

Q Could you give me a brief review of your employment history?

A Beginning when?

Q For the last 20 years.

A For the last five years, since July of

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'90, I've worked for the Office of Inspector General of the RTC.

From 1971 to 1990, I worked for the Department of Housing and Urban Development, Office of Inspector General and its predecessor.

Prior to that, I was in the Air Force.

Q Could you give me a brief description of your education history?

A I've got a bachelor's degree from Lewis & Clark College in Portland, Oregon.

Q When did you graduate?

A 1966.

Q What position did you hold at the RTC-IG at the time period March through August 1994?

A Assistant Inspector General for Investigations.

Q How many people did you supervise during that time period?

A Roughly 80 to 85, 90, somewhere in there.

Q And who did you report to?

A My immediate supervisor is Steven Switzer, the Deputy Inspector General.

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Q And who did he report to?
A John Adair, the Inspector General.
Q Did you have a deputy that reported directly to you?
A I have two.
Q What are their names?
A One is Lew Sherman, and the other one is Patrick Noble, Patrick Noble, N-O-B-L-E.
Q Are you aware of the Committee's document request that was made to the Office of Inspector General for the Resolution Trust Corporation?
A Yes.
Q Did you participate in the production of any documents in connection with that request?
A I provided some documents.
Q To your knowledge, have all responsive documents been produced to that request?
A Yes.
Q Have you spoken with anyone other than your counsel prior to this deposition with regard to your testimony here today?
A Yes. I've talked to Switzer, Adair,

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Black, Patricia Black who's our counsel.
Q What were the substance of those discussions?
A Trying to recall what transpired in the summer of '94 concerning this particular matter.
Oh, and also two agents who worked on the investigation, Sarah Herlihy and Joan Dwyer.
Q And what type of preparation did you do? Did you review documents, did you have discussions?
A Just had a discussion.
I reviewed some of the documents that were provided to the Committee.
Q I'd like to ask you some questions now about the Office of Inspector General, RTC.
A Yes.
Q Could you characterize how the Office of Inspector General of the RTC is independent of the RTC, how it operates and what its relation to the agency, what its function is?
A Well, the function is to conduct audits and investigations of the agency's programs. I mean, we don't, we're in, we work at the agency but we're

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independent of the agency's programs and operations.
Q Does it have its own payroll?
A We have our own appropriation.
Q Does anyone in the Inspector General's office report to the CEO of the RTC?
A Well, the IG does not -- can I talk to my counsel just a minute?
MR. O'CALLAGHAN: Certainly.
(Discussion off the record.)
THE WITNESS: The IG Act governs the relationship. I mean, he doesn't, he provides, he'll provide information on all the investigations when they are finished but the CEO does not control our work.
He can make a request to us to do things, but we can make the decision on whether or not we're going to audit or investigate.
BY MR. O'CALLAGHAN:
Q And this is all to the best of your ability. You can only answer what you know.
But with regard to the CEO reviewing the work of the Office of the Inspector General, what

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type of reviews are typically engaged in?
A They get the reports. They get the reports when we're done with our work. I mean, they're not engaged in reviewing the work as it's going on.
We conduct the work that we think is appropriate, and provide them with a report when we're finished and that's both on the audit and investigation side.
Q Is the CEO of the RTC generally kept apprised of the investigations going on, being conducted by your RTC-IG?
A No. No. As a general rule, no.
Q Is there a specific policy against that?
A Well, we believe that to preserve our independence that we conduct the investigations as we see fit.
Q Are there any employees of the Office of Inspector General at the RTC that act as liaison between the rest of the Resolution Trust Corporation?
A There's nobody that has that specific job, no.

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Q Is there anyone who performs in that capacity?

A Well, I mean all of us at the management level have contact with the RTC management you know in various things at various times. I mean, nobody is a designated liaison. I mean, we have to talk with them on occasion to do our job.

Q Now I'm going to specifically refer you to events that occurred between March and August of 1994, and you can answer to the best of your ability.

When did you first learn of the RTC Inspector General's office participation in the preparation of investigatory material for OGE's ethics review of possible improper White House Treasury contacts during that time period?

A 2nd March, OGE came over to our office and told us that Secretary Bentsen had requested them to conduct a review and investigation to determine whether Treasury employees had acted improperly or had violated any ethics rules with respect to these Treasury/White House contacts in disclosure of RTC information to the White House.

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OGE told us that they did not have any investigative capability, that they'd been to the Treasury IG also, and were going to ask the two of us, at an appropriate time, to help them in conducting that investigation.

Q Did Secretary Bentsen instruct them to approach the RTC-IG's office?

A I don't know.

Q Again, this is all to your knowledge. How did Secretary Bentsen approach OGE about conducting a review or an investigation?

A I believe he wrote them a letter back in what, February, as a result of the February hearing.

And then, you know, the whole thing was put on hold because of the investigation that was being conducted by the Independent Counsel. When OGE came to us, it was just to alert us that, at an appropriate time, when the Independent Counsel was done, they would be coming to us, requesting assistance in doing the review or investigation that Secretary Bentsen had asked for.

Q When OGE came over to RTC Inspector

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General's office during this time -- March of '94 --
A It was March 22nd.
Q Who from OGE came over and who did they meet with?
A Jane Ley, L-E-Y, who I believe she's the Deputy Counsel there, and a fellow named Rick. I don't remember his last name.
Q Is that last name Rick or first name Rick?
A I think that's his first name.
No, wait, that's his last name. Stuart Rick, Stuart Rick.
And he met with Pat Black, Steve Switzer, Jack Adair and myself.
Q What is Pat Black's position?
A She's the counsel to the Inspector General.
Q Do you recall specifically what was discussed in that meeting, i.e., what role the RTC-IG would play in any investigation to help OGE conduct a review?
A I really don't remember much about that meeting. It was just sort of, we're going to want

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you, you know, ask for your help later, and I mean, any detailed discussion of what was to be done was going to occur later before we were going to do it.
Q So at the time, did OG know that they weren't going to be going ahead right away with the -- that the investigation would be going ahead in the immediate future?
A It would be going on some time in the future. It wasn't know when it would be.
Q Was it fleshed out during that meeting or any time during March as to what responsibilities RTC IG would have and with regard to any other agencies that would be involved in helping prepare the report?
A The only thing I remember is that we'd be working with the Treasury IG. But, you know, beyond that, I don't recall anything else.
Q Okay. If you've already stated this, please let me know, but did you testify as to why the investigation was put off for a time?
A Because the Independent Counsel was doing a review of the same issues.
Q When was the the OGE and RTC IG and

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Treasury IG's office given the go ahead to begin an investigation?

A In June, the Independent Counsel, as I recall, issued a report, or issued a statement saying that they concluded their review of the particular matter, and then we were in contact with OGE about beginning.

Q Did the Independent Counsel contact RTC OIG's office directly, or did they just contact the OGE Office?

A They did not contact us. I don't know what the contact was between OGE and Independent Counsel.

Q Who initiated the start of the investigation after the Independent Counsel had completed their investigation?

A Well, we had a meeting with the Office of Government Ethics and I think the Treasury IG had a separate meeting with the Office of Government Ethics, and following those meetings, then we met with the Treasury IG investigation side and sort of figured out what we were going to do, and started.

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Q When did that meeting occur?

A Which meeting?

Q The meeting with the Treasury IG when you talked together to figure how to get on with the investigation?

A Well, let me back up for a minute.

Q Sure.

A On June 23rd, Pat Black and I went over and met with Jane Ley and Stuart Rick, and a lady by the name of Wilcox at OGE and tried to get a handle, get some idea of what they wanted.

And I'm not -- and then on June 30th, the two investigative staffs got together and met.

Q And did OGE give you any guidance at the June 23rd meeting as to what they wanted done?

A They talked generally about some of the issues that they felt needed to be covered, yes.

Q Do you have a specific recollection of what any specific discussions were or issues identified by them?

A One of the issues was to determine, okay, what the purpose of these contacts between the

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Treasury officials and the White House was, whether or not, whether or not the purpose of the contact was to further some public interest or some private interest.

Q Did they provide any guidance as to specifically how they wanted you to run the investigation, or were they just talking general goals of information that they wanted to uncover or find out?

A Well, we talked a little bit about the ethics rules, and I think they subsequently provided us a document with some guidance on it.

In terms of conducting the investigation, they left it up to us.

Q Did they have a similar meeting with the Treasury IG's office that they had with you on June 23rd?

A I understand they did. It was before we had our meeting.

Q Do you know when that meeting occurred?

A No. I just know it was before.

Q On June 30th, you said there was a meeting

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between the Treasury IG's office and the RTC IG's office.

A Yes.

Q Who participated in that meeting?

A Okay. Well, for the RTC IG's office, I did, Lew Sherman, Joan Dwyer and Sarah Herlihy.

Q And for their office?

A For their office, it was Jim Kados who is their Assistant Inspector General for Investigation, Raisa, R-A-I-S-A, Otero-Cesario, O-T-E-R-O-C-E-S-A-R-I-O. A Dan O'Rourke, who was one of the investigators, and Fred Coco, C-O-C-O, also an investigator.

Q And Otero-Cesario was?

A She was Kados' deputy.

MR. KRAVITZ: Mike, can I interrupt for one second?

MR. O'CALLAGHAN: Sure.

MR. KRAVITZ: It's fine, Mr. Blight, I just think the record should reflect that you appear to be refreshing your memory with a one-page document. Again, there's no problem with that. I

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just think so the record is completely accurate.
THE WITNESS: It's basically a chronology that's been provided to the Committee in the documents that you all have, so --
MR. KRAVITZ: If you could just identify it by its Bates stamp number so that the record reflects what it is that you are using.
THE WITNESS: 025252. It's just a chronology of events.
MR. KRAVITZ: Is that something you prepared?
THE WITNESS: We did it with Pat Black. We sort of tried to come together with, you know, some of the pertinent meetings and who was there. That's all that's on it, dates.
MR. KRAVITZ: Is that something that was prepared recently?
THE WITNESS: It was prepared last summer.
MR. KRAVITZ: Summer of '94?
THE WITNESS: '5.
MR. KRAVITZ: Summer of '95.
I'm sorry, Mike, to be asking these

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questions during your time.
MR. O'CALLAGHAN: No, that's fine.
MR. KRAVITZ: I just have a couple more questions about that document.
What purpose was that prepared for?
THE WITNESS: Just a second.
MR. GIBSON: Can we go off the record for a second?
MR. O'CALLAGHAN: Yes.
(Discussion off the record.)
MR. GIBSON: We can go back on the record.
Mr. Kravitz, the document in question relates to conduct or communications with the Office of the Independent Counsel.
Our understanding generally was that that's a topic that we weren't going to be required to get into, so I'll just ask you, do you really want us to answer that question at this point in time or not?
MR. KRAVITZ: I don't think it's critical. I think it's most important that we know who prepared it and when it was prepared. I think the issues of

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the Senate's position viz a viz the Independent Counsel's investigation are complex enough that we don't need to try to resolve them at this point, and I don't think we need to go in.

But the record should be clear. My questions are not meant to be investigating the Independent Counsel's investigation. I had no idea that's why it was prepared.

BY MR. O'CALLAGHAN:

Q I would like to take you back to the June 30th meeting we were discussing.

What were the substance of the discussions of that meeting?

A Well, we discussed how we were going to approach this, jotted down some ideas of who we should interview, whether at the Treasury, the RTC, or the White House, how we should conduct the interviews, how we should record the interviews, how we should -- and we had some preliminary discussions on the report, which would be down the road.

Q Were there any goals established or strategies put in place?

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A Well, we had to get going, we had to get going on the investigation because Secretary Bentsen had asked that the investigation be completed prior to the hearings, or that OGE give him I guess an opinion prior to the hearings.

And I think, as I recall, the hearings were scheduled like 30 days from the date the Independent Counsel made his announcement concluding his inquiry, and the Independent Counsel spent something like four months.

Q Did the RTC IG, Treasury IG feel compelled to have the investigation completed by that time?

A The Treasury IG did.

Q How about the RTC IG?

A We didn't feel compelled.

Q Did you have any opinion as to your ability to complete the investigation in that time frame?

A We were concerned about it.

Q What were you concerns?

A We wanted to be sure that we covered all of the issues, and we weren't sure that we could get

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all of the issues covered.
Q After the investigation was completed, did you feel you had enough time to cover all the issues?
A Well, we feel that all the issues got covered.
MR. KRAVITZ: Excuse me.
Mike, I'd like you, if you could, if you could articulate for me how that comes within Senate Resolution 120?
MR. O'CALLAGHAN: That question about the timing of the?
MR. KRAVITZ: Right.
(Pause.)
MR. O'CALLAGHAN: I can't point to Resolution Section 1(b)(2)(d) which authorizes the Committee to look at whether RTC employees have been improperly importuned, prevented, restrained, or deterred in conducting investigations or making enforcement recommendations fully into Madison Guaranty Savings & Loan Association and Whitewater Development Corporation.I
MR. KRAVITZ: I don't think that one gets

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you where you want to go. That has to be whether anybody was, whether any RTC employees who were investigating the merits of the failure of Madison Guaranty Savings & Loan Association or the investments and solvency of Whitewater Development Corporation were somehow interfered with or, to the contrary, were importuned to conduct certain investigations in certain ways.
That's not what we're talking about with Mr. Blight, I don't think.
MR. O'CALLAGHAN: Well, in any case, also under 2(b), the Committee's also authorized to investigate whether the White House engaged in improper contacts with any other agency or department of the government with regard to confidential RTC information regarding Madison Guaranty Savings & Loan Association or Whitewater Development Corporation, which also goes to the investigation that the RTC and the Treasury IG were conducting for the OG as well.
MR. KRAVITZ: How does your pending question have to do with that?
MR. O'CALLAGHAN: It has to do with

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conducting the investigation and the contacts, and whether there are --

MS. FISHER: That's clearly related, Neal. There are limitations on the investigation that they conducted dealing with this very issue is relevant to whether the improper contacts were fully investigated by the OGE.

MR. KRAVITZ: Well, I mean, you know, it may be so that you can go through every single page in this Resolution and come up with some paragraph under which, you know, by some strange interpretation, you can say that something is relevant.

You know, we've got an incredibly long, compact deposition schedule over the next three weeks, and we're all here for paragraph (e), you know, whether this report, the OGE report was improperly released to White House officials, or whether it was improperly used somehow by White House officials.

I don't think we're going to have hearings as to whether, I mean, we're certainly not expected

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to have hearings as to whether the RTC IG's office had enough time to conduct its investigation. That was never a subject of discussion while this resolution was being negotiated and drafted, and it never has been since.

Now I recognize that there are documents that have been produced that seem to address that issue, but just because documents were produced pursuant to extremely broad document requests doesn't mean that that means that we need to be spending time either in deposition. I don't think we're going to be spending time in hearings on these subjects.

MR. O'CALLAGHAN: Well, I think in order to fulfill the obligations of the Committee, we can repose the question to Mr. Blight and have him answer it with regard to whether the time constraints put on his office were proper or not, or were they able to properly conduct their investigation, and then we can move on.

As you say, we have a busy schedule so I'd rather just get moving on with it.

MR. KRAVITZ: Well, if you insist on

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asking the question, you can ask the question. I mean, if you think that this issue has any link to whether, and if so why, transcripts were released to the White House, and if that was improper somehow, I mean, I'd like to hear about that. I mean, that's what we're here for.

We've already had, we've already had six days of hearings in the summer of 1994 on the question of whether contacts between Treasury and RTC officials and White House officials were proper or improper.

I can't imagine that Senator D'Amato intends to have additional hearings on that subject, regardless of what Section 1(e)(2)(b) of the Resolution says. And that section was not drafted with the intention of going back over a subject area that was the subject of exhaustive hearings.

MR. O'CALLAGHAN: The subject that we're looking at here and what the question's meant to address is the time frame that was put together for the OGE and the interested agencies that assisted them in putting together their review of the contacts

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and whether or not the review that was set up was properly set up investigating the contacts.

And this will give the Committee an opportunity to look at the issue. And whether or not Senator D'Amato wishes to have the hearings on it is up to him. But I think we have an obligation to ask the question and have it answered.

MR. KRAVITZ: I'd just encourage you to take this quickly since it's not relevant.

MR. O'CALLAGHAN: I'd be happy to. I was planning on it.

MR. KRAVITZ: Let's go.

BY MR. O'CALLAGHAN:

Q Mr. Blight, before our last discussion, I had asked you a question about whether the RTC IG office felt like they had enough time to properly conduct the investigation of possible improper White House - Treasury contacts in the time period that was allowed to them during July of 1994.

A Well, it's hard to say. I mean, it's hard to answer that question because we were able to complete the investigation, we got everybody

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interviewed we wanted to get interviewed.
So it's difficult to answer that question.
Q Do you feel that the investigation was successfully completed in that time period?
A We got everybody interviewed we needed to get interviewed, and I'm not sure that had we had more time, the outcome would have been any different.
Q Do you know as to whether you or anyone else at RTC IG had problems with the time schedule?
A Well, I mean, it caused people to have to work extra hours and work doubly hard to get it done. But, you know, I mean it did get done. A lot of ground got covered in a relatively short time.
(Pause.)
THE WITNESS: Can I ask my counsel something?
MR. O'CALLAGHAN: Certainly. Let's go off the record for a moment.
(Discussion off the record.)
MR. O'CALLAGHAN: Back on the record.
THE WITNESS: Can we back up a second?
I'd like to back up. We're sort of moving

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ahead here into the investigation, but in terms of how that we got into it.
When it was time in June for the investigation to proceed, Secretary Bentsen wrote the Treasury IG and asked them to do this investigation. Secretary Bentsen also asked that the Treasury IG get us to assist them.
Secretary Bentsen wrote Mr. Ryan and asked Mr. Ryan to ask that we assist the Treasury IG.
BY MR. O'CALLAGHAN:
Q So did Treasury IG have a leading role?
A So they were basically, they were the leading, I mean, they were basically in charge of the investigation.
Q So did the Treasury IG did they dictate the timing of the investigation?
A Right.
Q Did they also dictate the scope of the investigation?
A No.
Q What dictated the scope of the investigation?

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A Well, we had a lot of input into that.
Q Did you find them receptive to your participation in determining what the scope was?
A Ultimately.
Q Why do you say ultimately?
A Well, there were a lot of discussions. We wanted more people interviewed than they did initially. We ultimately prevailed. We thought it should be a much broader scope than what they initially thought.
Q What were their initial thoughts on the scope?
A Interviewing fewer people. I mean, I don't remember exactly who now at this point.
Q Who's in charge of the investigation for Treasury IG? Who headed it up?
A Jim Kados.
Q Okay. I wanted to ask one more quick question about the timing of the, or the length and speed of the investigation that you had to conduct.
Do you recall whether your supervisor, Mr. Switzer, had any problems with the timing?

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A Yes, he expressed some concerns too.
Q And what were his concerns?
A That we were moving very quickly and that we wouldn't be able to cover everything we needed to cover.
Q And was he ultimately satisfied that everything was covered that he needed covered during the investigation?
A I believe so.
Q Was there anyone at RTC IG who wasn't satisfied with the investigation and the amount of time it was conducted?
A I don't know.
Q Have you ever learned?
A I don't know.
I might add one other thing too, if I might.
The Office of Government Ethics wrote Secretary Bentsen a letter shortly after we started, advising him of the possibility that we might not finish before the hearing, and if that looked like the case, they would come over and give him a

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briefing.
But that didn't happen.
Q You mentioned earlier, during the June 23, correct me if I'm wrong, let me rephrase that.
Did you mention that during the June 23rd meeting at OGE, you discussed the overall purpose of the review and investigation?
A Yes.
Q And later on, did you come to have different goals or purpose in the investigation, once you teamed up with the Treasury IG?
A No.
Q Were there two major purposes or goals?
You stated earlier one was to see if contacts were for a public purpose or for a private purpose, is that correct?
A Well, no. The purpose was to determine whether or not Treasury officials violated OGE rules, okay.
But I mean one of the things that the OGE asked us to kind of focus on during the interviews was whether or not, you know, these contacts were for

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a public or private purpose, if we could flush that out.
Q Were any other goals established or articulated? If you can just flesh out the kind of thinking that was going on during the investigation.
A Well, there were some different, I mean OGE had some rules, I don't remember now. The OGE provided us, I think, with some ethics rules that could have been applicable for us to keep in mind as we were doing the investigation.
Q Did they provide you with written copies of those rules?
A They provided us, I think, with a summary, and that was a document that's been provided to the Committee.
(Pause.)
Q Would you say at the end of the day that RTC IG was satisfied with the final scope of the investigation?
A Yes.
Q Were there any areas that weren't looked into that RTC IG would have liked to look into?

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A I'm not aware of any.
Q Who had primary responsibility RTC IG for coordinating the efforts of RTC IG with regard to this investigation? Who headed up the investigation?
A Well, we had the two agents that were working on it. We arranged the interviews with the RTC employees. The Treasury Department arranged the interviews of the Treasury employees as well as the White House.
Q Who were the, who did the RTC IG agents report to?
A They reported to me or Lew Sherman.
Q What type of contact did they have with your during this time period?
A Generally by phone. Occasionally in person, but mostly by phone.
Q And when they contacted you, what would be the nature of the contact? What would be discussed?
A Just how they're doing, what they're working on, what the schedule is. We didn't go into much detail about who was saying what in the interviews.

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Q Why is that?
A We were getting the transcripts the next day.
Q Getting them the next day.
(Pause.)
During this time period, what percentage of your time was spent working on the investigation?
A I have no way of knowing.
I was also working on the Rose Law Firm investigation too.
Q Can you give me a ball park figure?
A I really don't know, because I would spend time on other things too.
And there was one week I was on vacation from July 11th to the 15th.
(Pause.)
Q Who at RTC IG would you say had the most contact with people over at Treasury IG Office during the investigation?
A The most?
Q Correct.
THE WITNESS: Can I talk to my counsel a

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second?
MR. O'CALLAGHAN: Sure.
(Discussion off the record.)
THE WITNESS: Okay, can we go back on the record.
I mean, that's a hard question to answer. You mean besides the agents, right?
BY MR. O'CALLAGHAN:
Q Correct.
A Probably our counsel, Pat Black, or our Deputy IG, Steve Switzer.
I mean, I had contacts with Kados and had some contacts with Cesca about Cesca but probably the most would have been Pat Black who was dealing a lot with their counsel, Francine Kerner.
Q Can you spell that last name for the record?
A K-E-R-N-E-R.
Q Who was responsible for coordinating the depositions that were taken in July of '94?
A Well, the Treasury IG's office arranged for the court reporter, and they paid for them. They

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paid for the transcripts. And my understanding is the depositions, when they were done, went to the Treasury IG's office first.
Q Why did the Treasury IG's office pay for the depositions?
A Well, somebody had to pay for them, and they were the lead agency.
Q Were there ever any discussions of splitting the cost?
A Well, they volunteered to pay for it right up front. I mean there was never any question that they wouldn't pay for it. They thought it was a good idea to do it that way and they were more than willing to pay for it.
Q Do you know who the transcripts were sent to at Treasury IG's office once they were completed?
A I believe they went to Francine Kerner.
Q What's that belief based on?
A That's just what I think the way it was done.
Q Were you ever told that that's the way it was done?

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A Probably, but I can't recall anything specific. That's just my general understanding of the process, the way it was working. And then one copy would be given to one of our agents.

Q To any specific agent, or?

A It would be given to Joan Dwyer or Sarah Herlihy who would then provide it to either myself or Lew Sherman.

(Pause.)

Q Were the witnesses of the depositions ever given copies of the transcripts to review?

A They were given a copy of their own to review and then return it to us.

Q Was there any specific time they were given copies of their own transcripts, or was it done incrementally?

A It was done incrementally.

Q And who coordinated the transferring of transcripts to the witnesses?

A We did, we took care of the RTC employees. The RTC IG took care of the RTC employees.

The Treasury took care of the Treasury

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employees as well as the White House officials.

Q Now who specifically at each agency?

A Oh, Lew Sherman took care of it for us.

I don't know who did it for the Treasury IG, although I believe Francine Kerner may have been the person at Treasury.

Q Typically how long after the depositions were the transcripts given to witnesses?

A Well, I think, as I recall the first group weren't given out until about July 18th or 19th. Excuse me, the ones that we gave out, RTC IG were given out I think it was the 18th or 19th of July, and then we got them all back within a day or two.

I don't know when Treasury did theirs.

Q Do you know if it was in or around that time?

A I don't know.

And then after that, it was incremental after that.

Q Did RTC IG consider transcripts of the depositions taken of RTC employees to be RTC documents at the time?

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MR. KRAVITZ: Could I have that question read back?
(Readback.)
MR. KRAVITZ: Just as a point of clarification, are you referring -- as a point of clarification, does your question mean to refer specifically to the Inspector General of the RTC, or to the Inspector General's office generally, or to Mr. Blight specifically as to?
I mean, who's belief are we?
MR. O'CALLAGHAN: The first part of the question, what I'm addressing now is RTC IG's belief or position as to --
MR. KRAVITZ: Right, but who's position? The agency generally, the IG?
MR. O'CALLAGHAN: The IG's Office. The IG's Office.
MR. KRAVITZ: In other words, you're asking whether there was some collective opinion?
MR. O'CALLAGHAN: If there was an understanding in the RTC IG's office as to whether the transcripts of the depositions taken of the RTC

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employees were considered RTC documents.
THE WITNESS: Well, I think the information in the transcripts would constitute RTC information because, I mean, some of the RTC employees were discussing things that were, what'd I say, privileged? That the agency had never made public.
BY MR. O'CALLAGHAN:
Q And during this time period, did the RTC have any kind of confidentiality policy with regard to sharing of documents with other agencies, generally or specifically?
A The Office of Investigation of RTC may have, but I don't know. I'm not aware of what exactly it is. I mean, it's not something I would typically deal with.
Q During this time period, did the RTC or the RTC IG office have a specific agreement with the Treasury or the White House regarding the maintenance of confidentiality of RTC information provided to them during the course of this investigation?
A We discussed early on about, you know,

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writing the report. And I mean, they wanted, they were going to issue the report, and we had discussions --

Q I'm sorry, when you said "they"?

A They, Treasury.

We had discussions about what their Freedom of Information Act and Privacy Act roles were in terms of, you know, what was releasable.

Q And what were the conclusions of those discussions?

A Well, when we get down to the end when we wrote the report, I mean, we wound up writing a report that had redactions to it, so that the RTC information had been redacted, or the privileged RTC information had been redacted to preserve some of the corporation's privileges.

Q During the meeting where you discussed confidentiality of that type of information, did you identify precisely what type of information the RTC considered to be confidential?

A That came up fairly late in the investigation, when we were getting down to thinking

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about putting out a report. I mean, that was sort of like the last, I would say came down to the last week or so of the investigation, when that kind of became an issue.

Q Do you recall approximately what date?

A The final report was issued July 29, and I would say a week or so before that or during, you know, during the -- that's as close as I can put it.

Q Who was involved in the discussions at that time?

A Pat Black.

Q And who was she involved in discussions with?

A Well, I mean primarily her, and I think she talked with Francine Kerner.

Q Do you recall the specifics of their discussions?

A No. I wasn't involved in the discussions.

Q Were you ever told what they were?

MR. GIBSON: Let me ask a question to just clarify what we're talking about here. And I think that what Clark is talking about is information in

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the transcripts that RTC considered to be confidential for one reason or another, mostly that that information was privileged in connection with an RTC investigation.

Is that what you're asking about here?

Or are you asking about whether we consider the transcripts themselves confidential?

I mean I'm afraid I'm confused about where we're headed.

MR. O'CALLAGHAN: We're talking about specific information in the transcripts and whatever information in the transcripts that they considered or deemed to be confidential RTC information.

MR. GIBSON: Okay.

MR. O'CALLAGHAN: And then, within that, whether that information's considered RTC information in the definition of documents. It's somewhat ambiguous, but the point is whether there's information in the documents that the RTC considered belonged to them, was confidential.

MR. GIBSON: Okay, I just wanted to make sure that you were responding to the right question.

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THE WITNESS: Am I?

MR. GIBSON: We'll let you know.

BY MR. O'CALLAGHAN:

Q Do you know if during the period of June to July whether the RTC and the Department of Treasury had any differences of opinion as to what constituted RTC information or documents with regard to the information they shared?

A I don't know about differences of opinion. I mean, I remember there was discussion about things that had to be redacted from the transcripts in order for them to be included in the report. And that was --

Q Do you recall whether --

(Pause.)

Do you recall whether in June of 1994, Ellen Kulka sent correspondence over to the Department of the Treasury identifying differences of opinions that the RTC had about what was RTC documents in certain instance versus what the Treasury considered?

A Can I see that?

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MR. O'CALLAGHAN: Yes. I'd like to mark this as Exhibit Item One I guess, and the Bates is 015226. It's a four-page document on RTC letterhead addressed to The Honorable Dennis Foreman, Deputy General Counsel, dated June 14, 1994. It's signed by Ellen B. Kulka, General Counsel.

MS. FISHER: Wait, we don't want to mark it.

MR. KRAVITZ: Let me just make comment for the record so that someone reading this transcript isn't wondering where Exhibit Number One is.

The security procedures of the Special Committee prohibit the attachment of exhibits to deposition transcripts. And as a result of those procedures, what we do is simply identify documents by their Bates stamp number, rather than marking them as exhibits which would then become part of the transcript. So this document will not be attached to the transcript.

MR. O'CALLAGHAN: Thank you for that clarification.

THE WITNESS: This is a letter from the

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RTC General Counsel to the Deputy General Counsel of the Treasury. I don't know that we've ever seen this.

BY MR. O'CALLAGHAN:

Q Just my question was, were you ever aware that this letter was ever written?

A I don't think so, but it wouldn't necessarily come to us either, so --

Q Okay.

Just if I could get you to refer to the third page of the document, the first full paragraph reads:

You are hereby formally notified that any disclosure to the White House of documents which are RTC documents is unauthorized and may jeopardize the RTC's ability to protect our investigations, our deliberative processes, the attorney/client relationship and the privacy of third parties.

Have you ever, has that notification ever come to your attention?

A I don't believe so, no.

Q You're not familiar with that statement?

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A No, but I'll tell you this, that Ms. Kulka was very aggressive in preserving the various privileges that RTC had over RTC documents and information.
Q Would you say she was effective in protecting RTC's --
A I have no way of knowing that. I don't know.
Q Okay, thank you.
When you say that Ms. Kulka was aggressive, what do you mean by aggressive?
A She's a lawyer, she was assertive.
MR. KRAVITZ: Just ask Bernie Nussbaum.
BY MR. O'CALLAGHAN:
Q Was she effective in being assertive?
A I don't know. I'm not in a position to evaluate that.
Q Did you ever see examples of her being assertive with regard to protecting RTC's confidentiality?
A Yes. She had a meeting in our office with the Treasury IG on or about the 28th of July.

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Q And who was at that meeting?
A Adair, Black, Francine Kerner and Bob Cesca.
Q And you were there as well?
A No, I was not.
Q You were not.
A I left the room when she got there. It was a meeting between her and the two IGs and the counsels. It was my understanding she was quite upset.
Q What was she upset about?
A Over the release of the transcripts that had RTC information in them.
Q What release of transcripts with RTC information are you referring to?
A The transcripts that had been released to the White House on the weekend of the 25th? 4th? 23rd.
Q Did you ever learn what she specifically was upset about?
A I've talked to people that were at that meeting, but I understand she was quite angry at the

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Treasury officials.
Q Did you ever learn specifically what she was upset about?
A I understand she was very upset about the transcripts being released with RTC information in them, but I didn't attend the meeting.
Q Did you ever learn specifically why she was upset about the release of the transcripts with the RTC information in them?
A I don't know.
Q So you never learned that?
A If I did, I don't remember it specifically.
Q When did you first learn that transcripts had been given to the White House by the Treasury regarding transcripts in relation to the investigation that was conducted by RTC IG and the Treasury IG?
A The following Tuesday.
Q How did you find out?
A That would be Tuesday the 26th.
I believe I had a telephone conversation

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with Jim Kados that morning in anticipation of a meeting we were going to have in Rosslyn to work on a report, and I believe he told me.
And then shortly thereafter the meeting that occurred in our conference room, Cesca told the rest of the people who were there.
Q What did Mr, Kados specifically tell you on the telephone?
A That they'd gone over, and I think he said on the 25th. He was pretty upset about it too, as I recall.
Q Why was he upset?
A He hadn't been consulted about it. At least that's what he told me.
Q Why was he upset that he wasn't consulted about it?
A Because he didn't think it should be done.
Q Was he someone who normally would have been consulted about a transfer of documents of this nature?
A I don't know what the internal workings are of the Treasury.

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Q Was it your understanding that he would have it been?
A Pardon?
Q Was it your understanding that he would have been, he normally would have been notified of a transfer of documents?
A I don't know.
Q Did he tell you why, other than the fact that he hadn't been consulted, why he was upset about the documents being transferred to the White House?
A I don't remember much about that conversation because I was in shock that it had happened, and I wasn't real happy myself that that had happened. So we had this meeting coming up shortly thereafter, and figured it would get taken care of then.
Q Could you try to recall whether he told you specifically whether he talked about the appropriateness of the transfer?
A I've tried to recall what that conversation was, and I just can't remember exactly what we discussed. It wasn't very long. I mean,

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more of the focus of the conversation was what were we going to do when they came over to our office for a meeting that morning in terms of working on the report. My interest was breaking the agents away from the meeting so they could work on the report. You know, I wanted to get his support in that.
MR. KRAVITZ: I think I'd like a three-minute break when you get to a point.
MR. O'CALLAGHAN: Yes, in another four or five more questions.
BY MR. O'CALLAGHAN:
Q Just to take you back to the phone call, do you recall if you had a specific response to what he told you? Anything you said to him? Did you give him your impressions?
A I don't remember what I said.
Q You told me, you know, you were shocked?
A Yes, I was.
Q Why were you shocked?
A It's not something you do.
Q Why is that?
A Well, we had not issued the report yet.

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The investigation was still open.
Q So what's inappropriate about releasing the transcript before the investigation was completed?
A You don't release information prematurely pending the completion of the investigation, and given what this investigation was about, I just thought it was inappropriate.
I mean this investigation was about the Treasury giving information to the White House, and here it goes again, the same thing.
The information that was going to be released was going to be released in a report, and we had not yet written the final report.
Q Who made the decision to send the transcripts over to the White House?
A I have no idea.
Q Have you ever learned?
A It was made at Treasury.
Q Do you know specifically who at Treasury?
MR. KRAVITZ: I thought he had already said he had no idea.

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THE WITNESS: Who made the decision?
BY MR. O'CALLAGHAN:
Q Correct?
A When Bob Cesca came to our office, he said that he received a phone call on that Saturday night and --
Q Do you know who he received the phone call from?
A I don't recall who he said it was, but that the Secretary wanted the, I think he said wanted the transcripts sent over to the White House.
And they asked whether he concurred in that, or would concur or would object, or something like that.
Q And what did he say?
A My understanding is that he consulted with his counsel, Francine Kerner, and made the decision they would concur.
Q Had Treasury ever asked RTC IG whether they could transfer the transcripts from the investigation over to the White House prior to the release of the transcripts?

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THE WITNESS: Can I go off the record here?
MR. O'CALLAGHAN: Sure.
(Discussion off the record.)
(Recess.)
MR. O'CALLAGHAN: Back on the record.
BY MR. O'CALLAGHAN:
Q Mr. Blight, right before we went off the record, I asked you, and I'll restate the question.
Did anyone at Treasury ask RTC IG or approach anyone at RTC IG about releasing the transcripts of the investigation before they were actually released on July 23rd?
A No.
MR. KRAVITZ: Did you mean to his knowledge, did that happen?
MR. O'CALLAGHAN: Well, everything's to his knowledge.
THE WITNESS: Not to my knowledge.
BY MR. O'CALLAGHAN:
Q Do you know if there were any discussions about releasing transcripts prior to the issuance of

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a report between the two agencies?
A Repeat the question, please.
Q Were there any discussions between RTC IG and Treasury IG about the possibility of releasing the transcripts prior to the end or the issuance of the report by OGE?
THE WITNESS: Can I talk to my counsel again?
MR. O'CALLAGHAN: Certainly. Off the record.
(Discussion off the record.)
THE WITNESS: In one of the early --
Could you rephrase the question one more time.
MR. O'CALLAGHAN: Could you read it back?
(Readback.)
THE WITNESS: Okay. Yes, there were a couple discussions.
BY MR. O'CALLAGHAN:
Q If you could say when they were?
A In the meeting we had with the investigative staff I think on June 30th, it was

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explained to us that Treasury counsel's office wanted the transcripts in order to help prepare witnesses for the hearing.

Our position, RTC IG's position, my position was no, that the Treasury counsel's office would get the transcripts when the report was out.

Q And why didn't you want to release the transcripts to help prepare the witnesses?

A Because we were still conducting an investigation. And the investigation was still open until we issued the report.

Q Who was at the June 30th meeting?

A Well, I've given you those names earlier.

Q The investigative staff?

A Right.

Q And who headed the meeting?

A Well, it was in Kados' office.

Q So it was the investigative staff of both RTC IG and Treasury?

A Right.

And there was a general agreement on the investigative side that the transcripts would be kept

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with the investigators, would not be released.

Q That was the understanding of the investigators both for Treasury and for RTC IG?

A Right.

And my recollection was Kados was supportive of that.

Q Who at Treasury wanted to have the transcripts in order to prepare witnesses?

A I believe it was a guy named Schmalzbach. And don't ask me to spell it.

Q How did you hear that Schmalzbach wanted the transcripts?

A His name came up in the meeting.

Q Who brought his name up?

A The Treasury people.

Q Was there any more specific discussion of what type of preparation he wanted to use the transcripts for?

A No. Not at that meeting, no.

Then on July --

Q Let me ask you one quick question.

They said they wanted the transcript to

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prepare witnesses. Did they identify whether they were Treasury witnesses, White House witnesses, what witnesses they wanted the transcripts for?

A Treasury witnesses.

Q Solely Treasury witnesses?

A That was my understanding.

Schmalzbach, by the way, is in the general counsel's office.

Q Okay, I interrupted you. You were about to talk about the next meeting.

A Okay, on July 5th, we had a meeting at Cesca's office and that meeting, Adair, Switzer, Black, and myself were there from the RTC IG, and Cesca, Kados, and Francine Kerner were there.

And there was some general discussion about what we were going to do with respect to interviewing White House officials and I believe it was Francine had been in contact with the White House counsel's office, and --

Q Is that Francine, Francine Kerner?

A Yes. Had been in contact with the White House counsel's office, and had expressed their

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desire, the White House counsel's office desire to get the transcripts.

Q And was it expressed for what purpose they wanted the transcripts?

A To prepare for the hearing.

Q Do you know what witnesses they were looking to prepare for the hearing using the transcripts?

A No, I don't know.

Q What else was discussed at the meeting?

A Well, RTC IG's position was no.

Q And who articulated that?

A Adair, Black, Switzer, and me.

Q Would you say it was a firm no?

A Yes.

Q How specifically was it expressed? Did you give a reason for it?

A We thought it was inappropriate.

Q And what was their reaction?

A Well, we were still in the process of trying to work out the White House, you know, the White House interviews, I mean, the issue had not

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been, I mean, as far as we were concerned, it wasn't going to happen. There still had to be some discussion with the White House counsel's office about the interview of the White House officials. We still had not worked that out at that point.

Q Was there any discussion of negotiating with the White House to get access to the witnesses?

A There were discussions going on between Francine Kerner and one of the attorneys on Cutler's staff regarding that.

Q Was that Ms. Sherbourne?

A Right.

Q And what were the substance of those discussions?

A I wasn't involved in them, so I don't know.

Q Did you ever learn what they were?

A Well, we got our counsel, Patricia Black, to attend a meeting that was held later that day with it was Sherbourne and Francine Kerner and I think another attorney from the White House was there, to discuss the ground rules of the interviews of the

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Treasury officials.

Q Did you ever come to learn what they discussed in that meeting?

A I don't have my notes.

The White House, as I recall, the White House, at one point, wanted to be present at the interviews of not just White House people but others, and we said no.

Q Why did you say no?

A Because we were investigating the contacts that involved the White House and we didn't think it was appropriate to have their counsel present at an interview of a non-White House individual.

Q Was anyone at RTC IG surprised that the White House made that request?

A I don't know. They could request anything.

Q Were you surprised?

A But we said no. I mean, Patricia, Pat Black was quite assertive that our position was no, they couldn't be present, and they were not present.

And my understanding was there was also

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some discussion about the transcripts, and our position was no.

They wanted the transcripts of other people, other interviews because, you know, they had to prepare for these hearings, and it would just presumably save them time.

And Pat Black's position was that, well, you have a problem because, you know, we're not going to provide you with the transcripts.

Q So what was their reaction to that?

A I don't know.

I mean, they ultimately, as far as we know, they weren't going to get them.

Q Is that why you were surprised when you heard that they received them on the 23rd of July?

A Yes.

I mean, Pat Black's got a much better recollection of that obviously than I do.

Q Was anyone at RTC or RTC IG informed ahead of time that the Treasury was going to transmit the unredacted transcripts to the White House on July 23rd?

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A No, not to my knowledge.

Q Was anyone at RTC or RTC IG's office consulted about the transmittal of the unredacted transcripts to the White House prior to their release?

A Not to my knowledge.

Q Other than Jim Kados, did you have any discussions with anyone at Treasury regarding the handing over the transcripts without notifying the RTC?

A No.

Q You testified earlier that transcripts of depositions were released to the witnesses?

A Yes.

Q Was that done so that they could make corrections to the transcripts?

A Right.

Q Were they instructed to keep the substance of those documents confidential?

A I believe so.

Q How would they have been told to keep the substance of those documents confidential?

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A Lew Sherman sent them to the people, and he put a note on them.

We also, at the end of each interview, read a statement to each interviewee and asked them to keep the substance of the interview confidential.

Q You said Lew Sherman put notes on the transcripts when he sent them to RTC witnesses?

A I don't know if it said anything about it being confidential.

Q Did anyone at Treasury put similar notes on the transcripts they sent out?

A I don't know.

MR. KRAVITZ: Mike, if I could just say something for the record?

I haven't seen any of those cover letters that apparently were sent by Lew Sherman along with the deposition transcripts to the various witnesses who received them.

I don't mean to imply by that that you haven't produced it, because I haven't looked at every single piece of paper that's come over here from the RTC IG's office.

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Alice also said she hadn't seen any of those and I just would like to ask: Do you know whether we've been provided with those?

MR. GIBSON: They certainly should have been. I would think that they -- I mean, they're contained in the White House files, the White House briefings case files, so I'm pretty sure they have been. They're not very remarkable. They're very brief transmittal memos, and I don't even think that they all survived.

In other words, I don't think that, you know, he kept copies of every one that he may have sent out, to be honest with you.

But, yes, they should have been, I'm certain they were included in the documents that were provided to the Committee.

MR. O'CALLAGHAN: Were these handwritten notes?

MR. GIBSON: No. I don't really recall. I really don't remember.

MR. KRAVITZ: Is there anyone back at your office who might be able to direct us to a Bates

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number for any of these?
MR. GIBSON: Probably not. But I'll tell you what, let me check on it, and get back with you with the Bates numbers for those documents, okay. I don't think there's really anybody that I can call that would be in a position to do that right now.
MR. KRAVITZ: I mean, it's obviously what they say and what they don't say could become relevant.
THE WITNESS: But we only gave them to the RTC people.
MS. FISHER: Right.
BY MR. O'CALLAGHAN:
Q Have you ever come to learn that some unredacted transcripts relating to investigations at that RTC IG and the Treasury IG conducted in the OGE report may have been released by Treasury prior to July 23rd?
A When you say released, to whom? Say it again?
Q Let me restate the question. It was kind of hard to follow.

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Have you come to learn that Treasury, the Department of Treasury released unredacted transcripts to anyone other than the witnesses, prior to July 23rd?
A As we were preparing the draft report that was issued to Bentsen on the 22nd, the draft report did not have any exhibits, or it did not have the transcripts attached. And at some point, you know, around the 21st, I mean as we were preparing that, the question came up, and I don't recall any specifics, but we were led to believe that the Treasury counsel's office had been given the transcripts.
And that was why it wasn't necessary to, in the draft report, include transcripts.
Q Do you recall how you heard that?
A It just, it came out during various discussion. No, I don't.
Q Did you have any reaction to that?
A Well, it surprised me.
Q Why did it surprise you?
A Well, because I thought we'd agreed before

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that nothing would be released until we had a final report.

Q Did anyone at RTC IG have a reaction to this and get in contact with people at Treasury IG about this?

A I don't remember.

Q Did you ever hear why they might have been turned over to Treasury counsel's office?

A No. Other than that statement earlier, that they wanted them in order to prepare the witnesses, the Treasury witnesses.

Q Did you think it was appropriate that Treasury counsel's office could have received the unredacted transcripts at that time?

A Say that again.

Q Did you think it was appropriate for Treasury counsel's office to receive the unredacted transcripts at that time?

A Well, my preference would have been that they received the transcripts at the time the report was issued.

Q Did you ever hear or learn that an

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unredacted copy of the transcripts were released in a staggered fashion by anyone at the Treasury at the time they came out?

A No.

Q Did you ever hear that the transcripts were given to counsel for Treasury witnesses on July 25th by Treasury?

A I don't know that.

Q I'd like you to take a look at a document which is Bates stamped 014939. It's a one-page document, and it's entitled "Statement on Access to IG Transcripts By Witnesses."

I'd like you to take a look at that --

MR. GIBSON: Could I ask you what the origin of that document is? Is this a Treasury document? Or?

(Pause.)

MR. O'CALLAGHAN: Yes, that's a Treasury document.

MR. GIBSON: I'm sorry, Treasury or Treasury IG?

MR. O'CALLAGHAN: Treasury.

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MR. GIBSON: Okay.
BY MR. O'CALLAGHAN:
Q Just for purposes of refreshing your recollection, and if it doesn't, let me know, but it reads:
However once both the Senate and the Inspector General had completed their sworn depositions and the witnesses testimony had been taken under oath, we no longer felt it was appropriate for the Executive Branch witnesses not to be aware of each other's recollections. At that point, commencing on July 25, we gave counsel for each of the Treasury witnesses, copies of all the transcripts of depositions of witnesses, other than those working at the RTC.
Does that refresh your recollection as to when the counsel provided the transcripts?
A No.
MR. KRAVITZ: Mike, I think for purposes of accuracy and fairness to the record, it ought to be pointed out that you omitted reading the final sentence of that document, and I think you should

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read that in as well, since that's part of a paragraph that you began reading.
MR. O'CALLAGHAN: I'll be happy to read it.
It says: The RTC witnesses deposition transcripts were not made available until July 30th, last Saturday.
MR. KRAVITZ: Thank you.
BY MR. O'CALLAGHAN:
Q Mr. Blight, did you ever learn that the RTC deposition transcripts were made available to people at the White House before July 30th?
A Well, Lloyd Cutler said so on television during the hearing.
Q Is that your understanding as well?
A I mean, rephrase the question?
Q Just whether the Department of the Treasury would release unredacted transcripts, RTC transcripts on July 23rd?
A I didn't know about until later.
Q But are you aware of it now?
A Yes. You have the letter from McHale that

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sent them over there.
Q I just wanted your impression.
In the transcripts that were provided to the White House by the Treasury on July 23rd, was there any confidential RTC information contained in those transcripts that was not otherwise publicly available?
A I believe there was information in there about the criminal referrals that came out of Madison in some of the transcripts. I don't know exactly what transcripts were provided to the White House.
Q Well, if all the transcripts were provided, did any of the transcripts contain non-public confidential RTC information regarding investigations?
MR. KRAVITZ: Why don't you just ask him what the transcripts he's familiar with contained. If he doesn't know what was provided to White House, it's simpler if you just ask him what the transcripts he's familiar with contained.
MR. O'CALLAGHAN: Well, my question goes to whether if the universe contains all the

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transcripts and your knowledge of the transcripts contain that universe, if there's any confidential non-public RTC information regarding investigations in those?
MR. GIBSON: Off the record.
(Discussion off the record.)
MR. GIBSON: Yes, we can go back on the record.
THE WITNESS: Again, I don't know exactly what transcripts went over, but Ellen Kulka, the RTC general counsel's position was that there was certain information in some of those transcripts that she considered privileged. And that's why we then went through this exercise in redacting some of the transcripts.
BY MR. O'CALLAGHAN:
Q Is Ms. Kulka's position consistent with the statement by Mr. Cutler that there's no information in the unredacted transcripts that the White House didn't already have?
A I don't know. I don't know what the White House had already.

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Q Well with regard to the unredacted material that Ms. Kulka considered to be privileged, should the White House have had that information?
A According to Ms. Kulka, the information was not public.
Q When were the redactions to the transcripts made?
A The night of July 28th, the afternoon and the evening.
Q Who participated in that?
A Ms. Kulka sent three individuals to our office. Kevin Orr.
Q And who is he?
A He was an RTC attorney.
Jack Binkley
Q Is he an attorney as well?
A Yes.
And Casey Carter, C-A-S-E-Y.
Q I'm sorry, could you?
A Casey Carter.
Q And the first name was?
A Kevin Orr.

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Q And I just want to be sure I get them all. And the other person was?
A Jack Binkley.
Q Thank you.
And the three of them are attorneys, RTC attorneys?
A Orr and Binkley are. I don't know if Casey Carter's an attorney. She worked in the Office of Governmental Relations.
Q Did anyone else participate?
A Well, they went through and identified what they considered was privileged.
Q How did they make that determination?
A I don't know, they did it.
And then Pat Black, the next morning, went through and reviewed their work, and then made her own determination.
Q Were there any other steps involved in the process of redacting the documents?
A No.
Q Did Ellen Kulka tell Kevin Orr, Jack Binkley and Casey Carter what would constitute

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confidential information before they went out?
A I don't know.
Q Did you participate in the process at all?
A No.
Q Were the unredacted transcripts of deposition testimony used to communicate to White House officials or others confidential RTC information relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation?
A Could you repeat the question?
Q Sure, it's a long question.
A The first part of it.
Q Were the unredacted transcripts of deposition testimony used to communicate to White House officials or to others confidential RTC information relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation?
A The transcripts used to communicate -- not to my knowledge.
MR. O'CALLAGHAN: Is it okay with you if

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we take a five-minute break, and I'll try to wrap up?
MR. KRAVITZ: Sure.
MR. O'CALLAGHAN: Off the record.
(Recess.)
BY MR. O'CALLAGHAN:
Q Mr. Blight, you produced a number of handwritten notes, a number of handwritten notes were produced to the Committee, which I believe were written by you.
I'd like to show you a document which is, it's a four-page document, it does not have a Bates stamp on the first page due to the copy. The second page is Bates stamped 025335, the second page is 025336, and the third page is 025337, and on the top of the notes is the name that appears to be Dick Kiel, 4/25/95.
Have you ever seen this document before?
A Yes.
Q And where did you see it?
A That's my writing.
Q And is the writing appears in this document throughout your handwriting?

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A Yes.
Q Does anyone else's handwriting appear on the document?
A No.
Q Feel free to look through the whole document.
When did you produce this document, when did you write it?
A April 24th, 1995.
Q What was this document prepared in relation to?
A A telephone conversation.
Q And who was the telephone conversation with?
A A reporter with Associated Press.
Q And is that reporter's name Dick Kiel.
A Yes.
Q How is that spelled?
A K-I-E-L.
Q Going through the substance of the document, could you go through and decipher what's written on the first section of the document under

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the heading "Starr"?
A Okay, what do you want me to do here?
Q Just tell me what it references?
A Well, Starr is referencing the Independent Counsel of the Treasury IG, handled the Treasury/White House contact investigation. And apparently they have an allegation that Kerner gave information to Jean Hansen.
Q Okay. When it says they have an allegation, who is that referring to?
A It would be the AP.
Q Okay, and what was the purpose of this telephone conversation?
A I don't know, he just called. He was trying to see if I knew anything.
Q Did you have any reaction to claimed information that Francine Kerner was giving information to Jean Hansen?
A I had no knowledge.
Q Did you have any reaction to the statement?
A I tried to play very neutral when I talked

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to him.
Q But did you have any personal reaction that you maybe conveyed to Mr. Kiel?
A That I conveyed to him?
Q That you might not have conveyed to him?
A I don't know. I had no reaction.
Q Do you have any reason to believe that that assertion might be true?
A I have no basis to say that.
Q Okay, it says Kiel has memo Cesca. What does that refer to?
A Cesca wrote a memo, Francine Kerner worked for the Treasury general counsel, and he wrote a memo basically trying to wall her off and maintain her independence as his counsel in the investigation. I'm sure you all have that document.
Q Was there any specific reason that he brought that up, that he had that memo?
A He was just curious about it.
Q So he's asking questions about the memo.
A Yes.
Q What type of questions was he asking you?

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A He was making more of an observation than a question, that he just thought it was strange, a strange document.
Q Did he say why he thought it was strange?
A He may have, but I don't remember.
Q Could you read the next two lines that appear there after Kiel has memo Cesca's.
A Republican staffers gave paper? Well, I don't recall what that means.
Q Okay, and then the next line.
A Altman had advance info re what?
Q Do you know what that refers to?
A No.
Q Okay.
Then there seems to be another section of the note. Could you read what that says?
A Treasury Pat Black raised questions re Kerner's role.
Q And what does that refer to?
A We had, Pat Black and RTC IG had questions about her role in the investigation.
Q And what were those questions?

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A About her independence, since she was an employee of the Treasury general counsel's office as opposed to being an employee of the Treasury IG.
Q Did RTC IG believe that she was not a part of -- she did not have sufficient independence because she was part of the Treasury general counsel's office?
A Yes.
Q Did she behave, or were there any instances where Treasury IG believed that Kerner didn't act with the requisite independence that they would have liked her to?
A Treasury IG?
Q No, RTC IG?
A Repeat the question, if you will.
Q Was there ever a time that Kerner's behavior indicated that she didn't have the requisite independence that she needed to have in the role that she'd been put in?
A That's a difficult question, and Pat Black had most of the dealings with her.
Jim Kados, on numerous occasions,

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expressed concerns about what Francine Kerner was doing relative to her role.
Q What specifically did he express?
A Well, her independence from the Treasury counsel's office.
Q Did he cite any specific examples of behavior that caused him this concern?
A I believe he did, but I really don't remember them right now. I mean, it's not something -- I don't remember.
Q Do you recall whether there was anything direct relation to the investigations that you were conducting?
A Yes. Yes, we were concerned about her role.
Q But were there any specific instances in connection with the investigation that caused your concern?
A Well, early on, it seemed like she was an advocate for the White House.
Q And what caused you to come to that conclusion?

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A Well, during the discussion regarding the transcripts, okay. I mean, she wanted, initially wanted to allow the White House to get the transcripts. She wanted to allow having White House counsel present during the interviews.

You know, we thought we had beat that back, and it did not happen.

Q Were there any concerns regarding her role in connection with the handing over of transcripts to the White House?

A Cesca said that he had consulted with her.

Q What did he say that she had said?

A She defended it. She thought it was okay.

Q Had she approached him about it, or did he approach her about it?

A It was my understanding after he received the call on that particular Saturday, he called her.

Q Did she participate in the actual transferring of the documents to the White House?

A I don't know.

There was also concern about her relationship with the general counsel's office, since

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that's where she worked.

Q And what were those concerns?

A And whatever communication might be going on there.

Q That she might be communicating Treasury IG information and RTC IG information?

A Potentially information about the investigation, but you'll have to get that from Kados.

Q Did you ever hear that she did indeed communication information about the investigations to Treasury general counsel's office?

A I don't remember.

Q Did she have a role in transmitting unredacted transcripts to Treasury general counsel's office before the report was released?

A I don't know.

Q So with regard to that portion of the document, did you have any other specific conversations with Dick Kiel with regard to questions that Black had about Kerner's role?

A There was no detailed discussion here. I

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mean, this was just a statement he made.
Q Did you agree with it or?
A I was noncommittal.
Q And if we could go to the next section.
Could you read what that says?
A Francine denies anything inappropriate.
Kiel called Francine today. She was defiant.
Blustered on 15 minutes of denial in the context of
her role, vigorous defense of her role.
Q What does that reference?
A He apparently talked to her.
Q And he told you that's the way she acted?
A Right.
Q Behaved?
A Right.
Q How about the next section?
A People in Treasury have told Kiel the
investigation was compromised. Somebody called Kiel
two weeks ago to look in -- whatever, okay.
Q That's cut off.
Did he relate to you who in Treasury told
him that the investigation had been compromised?

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A No.
Q Did you ever find out who had told him?
A No. He's not going to tell me.
Q What was the purpose of him --
Did he state to you the purpose, what
purpose he had in relating this information to you?
A Probably to see what my reaction was.
Q But did he tell you?
A What?
Q Did he tell you what his purpose was?
A No.
Q Was there a stated purpose of the
conversation?
A I think I already answered that, didn't I.
He was just calling to theorize on some things, I
believe. I don't know.
Q If you would go to the next page of the
document, 025335, could you just read the top portion
of that?
A Which one?
Q The second page of the document, page
025335. It's kind of hard to read, but it's got a

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circle on the top with it looks like a 2.
Could you just read the top portion of that?
A Trying to write today? No.
Q What does that refer to?
A Was he going to try and write a story that day.
Q And the next section?
A Friend information he's gathered wife auto accident next week.
Okay, apparently he was calling on behalf of a friend whose wife had been in an accident.
Q Okay, and how about the next section?
A Meeting Cesca had at Treasury, who he talked to. Independent Counsel asked me not to talk about it Cesca told Kiel.
Q Do you know what that refers to?
A I guess Kiel had called Cesca and the Independent Counsel told him not to talk about this.
Q And then could you read the next portion?
A Nothing we can do to remove Francine from the case.

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Q What does that refer to?
A I don't remember. I don't remember.
Q Does the "we" refer to you or do you know who the "we" refers to?
A It would refer to Treasury people.
Q So was that one of your statements or his statements?
A I think what that refers to is the fact that Kiel had the memo walling her off, and Cesca's comment was there was nothing we could do to remove her from the case.
Q Okay, and did he say why, the reason Cesca gave for saying that there was nothing they could do to remove Francine from the case?
A No.
Q Did you ever learn?
A No.
Q Let's go to the next section.
If you can read that?
A Not under oath. Let's see. Kiel has information Francine didn't want White House staff put under oath.

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Q Did he relay to you what information that was?
A No.
Q Did you ever come to find out?
A Not what information he had, although that I believe was probably one of the early discussions that we had on how the investigation was going to be conducted.
Q Do you recall if that was one of the provisions that Kerner wanted to have as part of the investigation?
A I don't recall that specifically.
Q Do you recall ever having discussions about not putting White House staff under oath?
A Well, not specifically, but our position was that we were going to be put everybody under oath.
Q So if that was part of it, that's something you would have objected to?
A Yes.
We were going to treat everybody the same way.

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Q If you could read the next section.
A Covered relationship ethics guidelines memo of understanding, can't investigate your boss, question mark, was a Chinese wall okay for Francine.
Q What does that refer to?
A That refers back to the memo.
Q The Cesca memo?
A Yes.
Q Okay.
A That's right. That's why he thought the memo was screwy because he didn't think you could conduct an investigation of your boss. And Jane Hansen was her boss ultimately.
Q I'd like to draw your attention to the top of the next page, which has the letter three on the top. It's Bates stamped 025336, and I'd like you to read the first section of that, if you could, starting with "Cutler" down to I guess what looks like it says "led to believe with McHale's letter."
A Cutler needed to get testimony ready. His public pronouncement wasn't true. AP says Cutler had transcripts way early, five, six weeks early of

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hearing well in advance, not two, three days as led to believe with McHale's letter.
Q Is that something that Mr. Kiel said to you?
A Yes.
Q Have you ever come to learn that that was true?
A No.
Q Have you ever heard it was true?
A No.
Q Did he tell you what his source of information was?
A No.
Q Was he again just looking for your reaction?
A I don't know.
Q Did you have any comment when he made that?
A No.
Q Okay, could you read the next section.
A Transcripts went over to the White House piecemeal because we were doing.

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Q What's that underneath. There's an arrow also below "piecemeal."
A I think that's when he indicated a colleague had information, AP has every indication things went over early.
Q Did you have any indication that the transcripts went over to the White House in a piecemeal fashion?
A Did I have any indication? No.
Q No.
Did you ever learn that they were?
A No.
Q Okay, then go down to below the 76 section. It says things in the office, I think, or if you could read what that says?
A Things in her office, Francine said to AP that she had copies of transcripts.
Q And is there a date after that?
A It says 6/18.
Q Do you know if that was true?
A I don't know. I mean, the transcripts were delivered to her, but the 6/18 date wouldn't be

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true because we hadn't even started the investigation at that point.

Q I'd like to have you take a look at a document that's Bates stamped the first page is 25320.

A This is not my document.

Q Okay. How about the second page is 025232, and 025333.

A Yes, 32 and 33 are.

32 is Pat Black's.

Q Have you ever seen that before, that 025320?

A No.

Q Let me direct your attention to pages 025332 and 025333.

Have you ever seen that document before the one I just identified?

A Yes, it's mine. It's my writing.

Q Does anyone else's writing appear on the document?

A No.

Q What is 025332 and 025333?

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A It's another conversation with Kiel.

Q And these are your handwritten notes?

A Yes.

Q Can you read what the first section says there?

A Francine says she never would not have suggested -- basically it says that she never advocated not interviewing the White House people under oath.

Q Was that something she told to Kiel?

A Right.

MR. KRAVITZ: You mean that that's something Kiel reported her as having said?

THE WITNESS: Right.

BY MR. O'CALLAGHAN:

Q Okay, and I'd like to draw your attention to a section of the document that has an asterisk if you can read that portion of the document?

A Francine insists Pat Black handled distribution of transcripts to witnesses. Did not give transcripts to anyone who was not an investigator.

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Q Do you know if those two statements are true?
A Well, this is what Kiel says she told him.
Q Okay. Do you know did Pat Black handle the distribution of the transcripts to the witnesses?
A Not to my knowledge.
Q And did Kerner ever give transcripts to people other than investigators?
A I believe she did.
Q Who did she give them to?
A I believe she was handing them out to the Treasury people who were interviewed and their lawyers.
Q I'd also like to take a look at a three-page document. The first page doesn't bear a Bates stamp, but the second page does, it's 025329 and the page following is 025340.
Have you ever seen that document before?
I think it's 25340, on the third page, and 25329 on the second page.
It's a three page document, it's handwritten notes, and it appears to say Kados on the

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top of it.
Have you ever seen this document before?
A Yes.
Q What is this document?
A What is it? It's a telephone conversation I had with Jim Kados on April 3, 1995.
Q And is all the writing on this document your writing?
A Yes.
Q What was the subject of the conversation?
A He called me and there are several things.
Q Are there any items here related to the investigation being conducted by RTC IG on behalf of OGE?

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A Do you want to rephrase that question?
Q Sure.
Does this document reflect any discussions that occurred between you and Mr. Kyles regarding the RTC IG-Treasury IG investigation being conducted on behalf of OGE -- that was conducted on behalf of OGE in July of 1994?
A Could I go off the record for a minute?
MR. O'CALLAGHAN: Sure.
(Discussion off the record.)
MR. O'CALLAGHAN: We can go back on the record.
MR. GIBSON: If I could interject, the document appears to relate entirely to a description by Mr. Cottos of the Independent Counsel's investigation as it related to the Treasury Department.
As we said earlier, we did not think we were going to discuss the Independent Counsel's investigation or the Independent Counsel's activities.
If you want us to get into that, why don't

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you rephrase the question.
BY MR. O'CALLAGHAN: (Resuming)
Q Well, I would like to direct your attention to the bottom of the first page. If you could read from the bottom of the first page where it says "IRS" to the top of the next page where it ends with a box with an "IC" in it. Tell me what that says, and what that refers to.
THE WITNESS: Well, that refers --
MR. GIBSON: Those refer to the Independent Counsel but, Clark, go ahead and read it.
MS. FISHER: Let's go off the record a second.
(Discussion off the record.)
MR. O'CALLAGHAN: Back on the record.
BY MR. O'CALLAGHAN: (Resuming)
Q I want to ask you a question on the first page. There is a statement made there in the first person there. It says: "I printed out E-mail's complaining about Francine."
Is that a statement attributable to you?
A No. That is a statement attributed to

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Cottos.
Q Okay.
A It is almost a quote.
Q And on the top of the next page, 02539, the first line says, "Why not turned over IC". Is that a note made by you? Or is that a comment made to you by Cottos?
A That would be a note made by me.
Q What is that referring to?
MR. GIBSON: Again, that deals with the Independent Counsel. Do you want to rephrase that question?
BY MR. O'CALLAGHAN: (Resuming)
Q Mr. Blight, I guess on the third line on that page it looks like it says "anything seven named in," and then underneath that it says "on point" and then another circle "Whitewater, White House contacts."
Do you know what the "seven" refers to there?
A That's not a "7" it is an "F".
Q What does that refer to?

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A "Francine.
Q Does that refer to anything in connection with the RTC IG or Treasury IG investigation in connection with the OG report?
A Let me talk to -- go off here again.
(Discussion off the record.)
MR. O'CALLAGHAN: Back on the record.
THE WITNESS: What was the question?
BY MR. O'CALLAGHAN: (Resuming)
Q The question I asked was whether anything "F" named in "not turned over on point" section referenced the RTC IG or Treasury IG investigation in connection with the OG report.
(Pause.)
If you are having trouble with that question, I can ask another question.
MR. KRAVITZ: Could I just suggest?
MR. O'CALLAGHAN: Sure.
MR. KRAVITZ: We certainly would not object if this question were asked: Did Mr. Cottos or anyone else ever tell you that anyone at the Department of Treasury directed that certain relevant

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and responsive documents not be turned over to the Independent Counsel's office on this subject?

THE WITNESS: Yes.

BY MR. O'CALLAGHAN: (Resuming)

Q When did he tell you that?

A On April 30th.

Q Is that reflected in this document?

A Yes.

Q Who did he say directed that certain relevant documents not be turned over?

A Well, I'm not sure.

The process was that, as I understand it, that the IRS Inspections Division gathered up documents and they were reviewed by a Rick Doery who was an attorney who worked for Francine Kerner, and I guess who works as one of the counsels for the Treasury IG.

Q Was he directed not to turn documents over?

A I don't know.

Q Do you know if anyone else was directed not to turn documents over?

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A I don't know.

Rick Doery is the only name that was mentioned.

Q Did he identify what responsive documents were identified as not to be turned over?

A E-mails that he had written complaining about Francine Kerner.

Q Doery had directed him not to produce those?

A Had directed him?

Q Correct.

A That I don't know.

As I said, my understanding was the documents had been gathered up by the IRS Inspections Unit and turned over to Doery.

Q This was the universe of E-mails that had negative things about Francine in them?

A You'll have to ask Cottos.

Q Is that your understanding, unspoken?

A I don't know about "universe."

Q But it is your understanding that the E-mails that have been gathered that have negative

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things about Francine in them were directed not to be produced?
Is that correct?
A That is my understanding.
Q On the bottom it says, "Cottos took copies, notes."
What does that refer to? That is at the bottom of the first page.
A He had his own copies and notes.
Q Copies of notes of what?
A Copies -- he had his own copies of E-mails.
Q And what notes is that referring to?
A Just notes.
Q Notes that he kept in the daily course?
A I don't know. He didn't elaborate.
Q What was the reason -- did he give you a reason for why these documents were directed not to be turned over?
A No -- No.
Q Did you ever learn if these documents that were not turned over were withheld?
A Can we go off the record again?

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MR. O'CALLAGHAN: Off the record.
(Discussion off the record.)
MR. O'CALLAGHAN: Could you read the question back?
THE REPORTER: "Q What was the reason -- did he give you a reason for why these documents were directed not to be turned over?Did you ever learn if these documents that were not turned over were withheld?"
THE WITNESS: It's the next question.
MR. KRAVITZ: Let me just rephrase the question. The question is: To your knowledge, were these E-mails ever produced to the Independent Counsel's office?
BY MR. O'CALLAGHAN: (Resuming)
Q Did you ever learn why the documents were withheld from being produced to Independent Counsel?
A No.
MR. KRAVITZ: Well, wait. I think you are jumping the gun. I am not sure that there was testimony that they were withheld.
BY MR. O'CALLAGHAN: (Resuming)

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Q Why they were directed not to be turned over to Independent Counsel?
A No.
Q Did you ever have any subsequent conversations with anybody regarding the subject?
A No.
Q If I could just ask you to look at the last page of this document, 025340, in the middle of the page there is a flow chart. It says -- if you could tell me what it says there? Something "IC" then "scope" "OG" and "Switzer".
A That's what it says, but I have no recollection of what that would mean.
Q Then down below there is a reference to, it says "Ed Knight" and then it says "How dare you tell" -- Could you tell me what that says?
A "How dare you talk to my employees that way."
Q What does that refer to?
A Cottos told me that Ed Knight made this statement to the new IG, Valerie Lau, and it has something -- and I do not remember exactly what it was

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in reference to, but Treasury -- I believe that Valerie Lau wanted to have her counsel and not part of the Treasury's IG -- or not part of the Treasury's General Counsel Office.
And there was some negotiation or something going on between her and Knight. And I believe Knight is the current general counsel --
Q What time period was this?
A I don't know when this was in relation -- it was prior to the call, but I don't know when.
Q Okay.
A I believe that Valerie Lau had questions about Francine, and somehow Knight got into it. And Knight made this -- according to Cottos, Knight made this statement to Valerie Lau.
Q Do you recall which statements were regarding Francine?
A It's relative to something that Valerie Lau had said to Francine, but I don't know what it was.
Q Was it in connection with the investigation?

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A I don't know.
Q Mr. Blight, did you have any involvement in any of the determinations that resulted in Richard Iorio, Lee Ausen, and Jean Lewis being put on administrative leave?
A Any involvement in the determinations?
Q Correct.
A No.
Q Did you have any involvement in the issue, in your capacity?
A At some point after the had been put on administrative leave, the RTC Legal Division requested that the OIG conduct an investigation.
Q Were you requested to conduct the investigation?
A They asked that we do it.
We asked the RTC Legal Division for -- we received a memo outlining some general obligations. We asked then for some specific information to support their allegations.
They had been out in Kansas City doing a review and we wanted that material before we did

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anything.
It took them three weeks, I believe, to get the information to us.
Q I'm sorry? Who is "they"?
A The RTC Legal Division.
Q And who was involved in putting that information together?
A Andrew Tomback, and I believe Thomas Heinz.
Q Okay.
A And when we received the information, we had some conversation with the Independent Counsel's office, and I have deferred doing anything since.
Q Had you started an investigation of the matter?
A No.
We were waiting to get the material from the Legal Division before we started anything -- started an investigation.
Q And have you since initiated any investigation?
A Let me add also one thing. The Legal

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Division asked us to investigate. We also received letters from the attorneys for two of the three people asking that we also conduct an investigation.

MR. GIBSON: Let me ask a question to clarify: Did we open an investigation?

THE WITNESS: Yes. Yes.

MR. GIBSON: But did we conduct any investigative work?

THE WITNESS: No, because we were waiting for the material from the Legal Division.

BY MR. O'CALLAGHAN: (Resuming)

Q Who opened the investigation?

A Well, it would have been Pat Noble's office. I mean, his office is the one that would have been assigned the investigation to conduct.

Q Okay, you say one was open but one wasn't conducted?

A Well, we numbered a file. Okay? We opened a file. But we did not conduct -- we have not conducted any investigation to this point.

Q Did you review the materials that you got from Kansas City regarding the investigation of those

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three individuals?

A Yes.

Q What was your impression of the materials you acquired?

A Do I have to answer that question?

I mean, I think it is premature to make any judgment or --

Q Well, you said you asked for additional materials. Is that right?

A Right.

Q And why did you ask for additional materials?

A Because they had been -- some people had been in Kansas City doing a review, and we wanted that material, the results of that review, before we began an investigation.

Q Who had been conducting the review?

A A lawyer in the legal division by the name of Tom Sarisky.

Q How do you spell that?

A S-A-R-I-S-K-Y. He is a lawyer who deals with personnel issues, and an employee -- an individual

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from the Office of Personnel by the name of Randy Mendelssohn.
Q What was the purpose of that review? Was it in the normal course? Was it initiated as a result of certain events that had occurred?
A I don't know what the purpose of that review was at this point.
Q Was it a special review? Or was it a review that was done in the ordinary course?
A I don't know what the purpose of the review was at this point.
Can we go off the record a moment.
MR. O'CALLAGHAN: Sure. We're off the record.
(Discussion off the record.)
MR. O'CALLAGHAN: Okay. Let's go on the record.
THE WITNESS: Could you re-read the question?
THE REPORTER: "Q Was it a special review? Or was it a review that was done in the

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ordinary course?
THE WITNESS: Could you rephrase it one more time?
MR. O'CALLAGHAN: I will attempt to.
BY MR. O'CALLAGHAN: (Resuming)
Q You stated that before conducting an investigation into the issue of the administrative contacts, you said a review was being conducted?
A (Nods in the affirmative.)
Q And I asked you what the purpose of the review was.
A Okay. Part of what we would look at would be what the purpose of the review was. I don't know what the purpose was at this time. And we would evaluate later what the purpose was.
Q Was there any specific reason why you were looking at the purpose of the review?
A Because of the letter that we received from the -- or the letters that we received from the attorneys for two of the three people that had been put on leave.
Q And what did those letters say?

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A I have not looked at the letters recently and I do not recall specifically, but I believe they were placed on administrative -- the employees were placed on administrative leave improperly.

Q That was the claim made in the letters?

A Right.

MR. O'CALLAGHAN: Okay. We have no further questions at this time.

MR. KRAVITZ: Let's go off the record for just a minute to discuss our schedule.

(Discussion off the record.)

EXAMINATION

MR. KRAVITZ: Let's go on the record.

BY MR. KRAVITZ:

Q Mr. Blight, I think as you know, my name is Neal Kravitz and I am counsel to the Democratic Members of the Special Committee.

I am going to ask you some questions, some in areas that have already been covered and some in some partially new areas.

I want to start just generally by asking you questions about the redaction process that took

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place relating to the deposition transcripts of RTC witnesses in late July of 1994.

Now you testified earlier this morning that you were not involved in the process of redacting those deposition transcripts.

Is that right?

A That's correct.

Q And when you say that you were not involved, what you mean is that you were not involved in the determination of what type of information would be redacted from those transcripts?

A That's correct.

Q And you also were not involved in the actual physical redacting of the transcripts?

A That's correct.

Q Despite your lack of involvement in that process, are you generally familiar as you sit here today with the type of information that was redacted from the transcripts of deposition of RTC witnesses?

A Only very generally.

Q What is your general understanding of the type of information?

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A Well, it was privileged information related to criminal referrals out of Madison.
Q When you use the term "privileged information," what do you mean by that?
A That is a term that the RTC Legal Division has used, and our lawyers use. It is information that has not been made public.
Q And what is your understanding of what the phrase "information that has not been made public" means?
Does that mean information that has not formally been made public by the RTC as an official matter?
A Yes.
Q Let me give you, or ask you a hypothetical question. Let's say there was some information that was privileged under the definition that you just gave that was leaked without authorization to the press but had never been divulged as a formal matter by the RTC. Would that information remain "privileged" as you used that term?
A Well, if it was improperly released I

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think it potentially could be still privileged. It kind of depends on what the nature of the information is.
Q Have you reviewed the redactions that were made in the transcripts in late July 1994?
A I haven't reviewed all of them, no.
Q Have you reviewed any of them?
A Very little.
Q Are you familiar with the fact that primarily what the redactions are redactions related to say the number of criminal referrals that were made by the RTC to the Department of Justice in the fall of 1993?
A I believe that's correct.
Q And your belief that that is correct is based on your limited review of the redactions?
A Right.
Q Now you are aware that as of late July 1994 the number of criminal referrals sent over by the RTC to the Department of Justice in the fall of 1993 was information that had been leaked and reported in the press, are you not?

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A I don't know that with certainty.
I don't know that with certainty; I don't know.
Q Are you aware of the fact that it was known publicly as of the summer of 1994 that the RTC had sent nine criminal referrals back in the fall of 1993?
A I don't know that it was in the press, that number.
Q What do you know about that?
A I don't -- I know that there were referrals that were sent. That was in the press. I don't know, or I don't recall that the number was mentioned.
Q But let me just -- just to be clear, assume for the purposes of this question -- and I understand that you do not know that assumption to be correct -- but assume for purposes of this question that the number nine relating to the number of referrals had been reported to the press, and assume -- reported in the press -- and assume that that information had been provided to the press without authorization by the

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RTC.
Am I correct that that number of criminal referrals still would be considered privileged under your definition of that term, even though the information was available to the public?
A I believe it would be. I mean, that is where I would be consulting with the lawyers.
Q But your understanding is that it was that type of information, the number of criminal referrals, that was redacted as being privileged from those transcripts?
MS. FISHER: That is a total mischaracterization of his testimony.
THE WITNESS: I think that -- I mean there may have been -- you know, I don't want to speculate. I would have to go back and review the transcripts. I haven't looked at the transcripts since July of '94; okay?
So, I mean there may be other things that were redacted other than just the number.
BY MR. KRAVITZ: (Resuming)
Q Why was it that you were looking at the

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transcripts in July of 1994?
A We were writing the report.
Q So you were involved in drafting --
A The report.
Q And you looked at the transcripts before or after they were redacted?
A Before.
Q So did you ever look -- I believe you testified earlier that you have looked, at least in a limited fashion, at the redacted transcripts?
A Yes.
Q When did you do that?
A After they were redacted. I mean, they were redacted July 28th. So sometime after that.
Q Was it before or after the report was issued?
A The report was issued on the 29th. So it would have been after that.
Q So you looked at the redacted reports not as part of the process of drafting the report --
A No.
Q -- but as part of some other process?

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A Yes.
Q What was that?
A Just sort of flipping through the transcripts.
Q For the purpose of what?
A No particular reason.
Q Just to see what had been redacted?
A How much. More to see how much black was across them. I didn't sit down and compare the original with what was redacted.
Q You looked at the redacted copies just to get a sense of how much stuff --
A Right.
Q -- had been blacked out?
A Right.
Q And what was your sense of how much stuff had been blacked out?
A Not very much.
Q Other than the number of criminal referrals that were sent to the Justice Department, what type of information, if any, was blacked out as far as you know?

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A I believe some names may have been blacked out.
Q Names of what type of people?
A Other potential defendants.
Q So it is your understanding, at least to the extent that you can remember, that the information that was redacted by the RTC was the number of criminal referrals that were sent from the RTC to the Justice Department; names of potential defendants; is there anything else that you can remember based on your review of the type of information that was redacted?
A I would have to go back and review the stuff. I really cannot answer these questions about what was redacted with any certainty because I have not reviewed this material in well over a year.
Q Do you know whether anyone at the RTC came up with any standards by which the redactions to those transcripts should be made?
A No, I don't know.
Q Who was directing the redactions?
A There were three people that Ellen Kulka

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sent over.
Q And you just do not have any information about whether any standards were drafted that should be applied by the people that were actually doing the redaction?
A I don't know. Then our counsel, Pat Black, reviewed them the next morning.
Q And you don't know what standards Pat Black had in her mind while she was reviewing these redactions?
A She told me that she would redact less than what they wanted, and we redacted less than what they initially wanted.
Q So Pat Black told you that some of the information in the transcripts that the RTC people had marked as being privileged, she actually thought should be provided?
A Correct.
Q And your testimony is that Ms. Black had the final say on this?
A Right; yes -- well, I believe she also talked to the Legal Division about her concerns in

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those particular areas.
Q What type of information did the Legal Division people think should remain privileged, but Ms. Black thought did not need to remain privileged?
A I don't know.
I don't know.
Q When were the unredacted transcripts provided to the White House?
A (Pause.)
I don't know.
Q Well, you were told at some point that the transcripts had been provided to the White House; correct?
A Transcripts were provided via that McHale letter on the 23rd.
Q Okay, so your understanding --
A But that was before the redacted transcripts --
Q -- your understanding is that the unredacted deposition transcripts were provided by the Department of the Treasury to the White House on July 23, 1994.

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Is that correct?
A Which ones?
Q The unredacted transcripts.
A That's based on the McHale letter.
Q But that is your understanding?
A Correct.
Q Now on July 23rd, nineteen ninety -- well, let me back up.
Articulate for us, if you can, what your concerns were when you learned that unredacted deposition transcripts had been provided to the White House?
A The investigation had not been completed.
Q Why did that cause you concern?
What were you afraid might happen?
A Well, depending on what further interviews we had to do, I mean people would have the advance information of what others had said.
Q Anything else?
A I thought it was very important in this particular case, given the profile of the case, that we follow what I would consider our standard

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procedures to be; and that we issue the report, and we have whatever supporting documentation released at that time and not before.

Q Were there any other concerns that you had as a result of the unredacted transcripts being released to the White House, other than those two you just mentioned?

A No. I mean, not at that time.

Q To this day, are there any other concerns that have struck you about that, about the release of those unredacted transcripts to the White House?

A Well, yes. You can add in the fact that they were unredacted. I mean, I had not focused on that at that particular time.

Q Let me just ask some questions related to those concerns.

On July 23rd, 1994, what was the status of the deposition process being conducted by your office and the Treasury IG's office?

A The "status of the deposition process"?

Q Were the depositions completed?

A I believe we still had an interview we

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wanted to do of --

Q Mr. Ludwig?

A -- of Mr. Ludwig.

Q Now Mr. Ludwig is the Comptroller of the Currency; correct?

A Right.

Q Mr. Ludwig did not work at the White House?

A Right.

Q Do you have any evidence that any of those unredacted transcripts that were provided to the White House on July 23rd even made their way to Mr. Ludwig before he was interviewed by the IG's office?

A No.

Q And you have no reason to believe that happened, do you?

A No.

Q So would you agree with me that this first concern that witnesses who were subsequently to be interviewed as part of the investigation might have access to other witnesses' transcripts, was not a concern that ever came to pass?

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A No, I would not agree with that because Mr. Ludwig may have mentioned other people that we may have to interview, and they might have been at the White House.

Q Okay.

Well, did that happen?

A No.

Q Did any other White House witnesses get interviewed by your office, or the Treasury IG's office, after July 23rd?

A No.

Q So there was -- in fact, there was no problem with White House witnesses testifying as part of the investigation after having had an opportunity to review other witnesses' transcripts?

A That is a long question.

Could you rephrase it?

Q Let me ask it open-ended.

Did any White House witness -- any White House official get deposed by your office or the Treasury IG's office after those unredacted transcripts were sent over to the White House?

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A I don't believe so, but I would have to go back and review --

Q To your knowledge, the only witness who was deposed after July 23rd was Mr. Ludwig?

A I believe so, but I would have to check.

Can we go off the record a minute?

(Discussion off the record.)

BY MR. KRAVITZ: (Resuming)

Q On the record.

A I would have to check to verify it.

Q Well, let me ask you if you would check. If the answer is that any White House official was deposed after July 23rd, 1994, if you would please notify us as soon as possible in writing we would appreciate that.

A Certainly.

Q Mr. Blight, do you know of any White House official whose testimony before -- whose testimony as part of the OGE investigation was affected or influenced in any way by the release to the White House on July 23rd, 1994, of the unredacted transcripts?

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A Can I go off for a second?
(Discussion off the record.)
THE WITNESS: On the record. I don't know.
BY MR. KRAVITZ: (Resuming)
Q Now you have testified that you were involved in the drafting of the OGE report? Is that correct?
A That's correct.
Q What was the involvement in the drafting of the OGE report of your office?
MR. GIBSON: Let me ask a clarifying question and make a clarifying point.
Were you involved in the drafting of OGE's document, or the drafting of a report that went to the OGE upon which they based their opinion?
THE WITNESS: That's correct.
What is the OGE report you are talking about?
BY MR. KRAVITZ: (Resuming)
Q Why don't you tell me what your involvement was in drafting any report.

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A I was involved in drafting the report of investigation.
Q And that was a report of investigation that went from what entity to what entity?
A That went from the Treasury Department to OGE. And I believe then the Treasury Department then also gave a copy to Secretary Bentsen.
Q What was the involvement of the RTC Inspector General's office?
A We were involved in drafting the report with the Treasury IG.
Q Now when you said that the report went from the Treasury Department to the OGE, did you mean it from the Treasury IG --
A The Treasury IG's office to OGE and to somebody in Treasury.
Q Was that --
A And we also gave a copy of the completed report to Mr. Ryan.
Q When was that report completed?
A It was issued on July 29th.
Q Your report, the Treasury IG's report was

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issued on July 29th?
A Right.
Q And the OGE report was issued when?
A The OGE opinion on the report?
Q Um-hmmm.
A I don't recall.
Over the weekend -- I don't recall.
MR. KRAVITZ: Let's go off the record for one second.
(Discussion off the record.)
BY MR. KRAVITZ: (Resuming)
Q On July 29th the Treasury IG's office, assisted by the RTC IG's office, submitted its report to the OGE?
A Correct.
Q And then only July 30th, the OGE issued its analysis of the IG office's report.
Is that correct?
A That's correct.
Q Now is it fair to say that the IG office's reports were factual in nature; while the OGE's report was more analytical?

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A Yes.
Q And to your knowledge, the report, the July 29th report from the IG's office was based on the deposition transcripts and other supporting documents; correct?
A Correct.
Q Do you know of any -- was there any way in which the factual report provided by the IG's office on July 29, 1994, was affected by the release of transcripts to the White House on July 23rd?
A To my knowledge it wasn't.
Q And as far as you know, the conclusions, or the analysis contained in the OGE's report of July 30th similarly was not influenced or affected in any way by the release of deposition transcripts to the White House on July 23rd?
A I don't know what process OGE went through in rendering its opinion.
Q So as far as you know, OGE's process was not influenced or affected by the release --
A I don't know what the process was.
Q Let me ask the question this way:

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Do you know of any way in which the OGE's analytical process was influenced or affected by the release to the White House on July 23rd of the unredacted deposition transcripts?

A I don't know what the process -- I don't know what their normal process is, and I don't know what process they used in this contest.

Q Now you have testified about what you have described as the IG Office's "normal procedures" of not releasing deposition transcripts until an investigation was complete.

Is that right?

A Um-hmmm.

Q Is this normal procedure written down anywhere?

A Well it is normal procedure that you put together your case, and you present the case all at once.

Q Is this a standard procedure that is in writing under some regulation or other rule of the RTC IG's office?

A It is pretty much standard investigating

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procedure.

Q My question is: Is it in writing?

A Is there --

Q Is there some written regulation or rule that guides or controls the behavior of members of the Office of Inspector General at the RTC that prohibits the release of investigative materials such as deposition transcripts until a final report is released?

A There is not a specific rule, no.

Q So it is tradition? Is that what you are saying?

A It is standard practice.

Q Are you aware of any other instances in which deposition transcripts or other investigative materials have been released outside the IG's office before the issuance of the final report?

A Can I go off the record a minute?

(Discussion off the record.)

THE WITNESS: Back on the record.

Yes, we would release documents to a prosecutor before the report was issued.

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BY MR. KRAVITZ: (Resuming)
Q In what type of a case?
A In a criminal investigation we would be running.
Q Can you give an example of how that would work?
A Well, we are frequently in contact with Assistant U.S. Attorneys in conducting investigations, and as the investigation progresses very often they want copies of the interviews or pertinent documents prior to the issuance of the report.

There are other occasions where, if management needs to take some sort of immediate action on an administrative case, we might issue some documents to them in order for them to effect some immediate action.

But the normal rule is not to release.
Q So in other words, although it is standard practice not to release investigative materials during the investigation, there are exceptions to that standard practice?

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A That's correct. But we do the releasing.
Q And one of the exceptions to that standard of practice is if certain investigative materials are important to another ongoing investigation such as a criminal investigation.

Correct?
A It's possible.
Q Well, it's not "possible"; you have already testified --
A Okay; that's correct.
Q -- that that is one of the circumstances under which you --
A Okay.
Q And you are aware that as of late July, 1994, the White House counsel's office was conducting a parallel investigation into the propriety of White House-Treasury contacts, are you not?
A Yes.
Q To your knowledge, had the Office of Inspector General at the RTC ever collaborated with the Office of Government Ethics on an investigation before the investigation we have been talking about

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in July of 1994?
A Not like this; no. I think we may have gone to them in the past on occasion for an opinion, but not in this context; not in this sense.
Q So in other words, in the past your office had gone to the OGE for an opinion which, you will agree, was a different situation than we had here where the OGE was coming to you for investigative assistance?
A Right; right.
Q Now you have testified previously that the Treasury IG's office was the lead investigative agency; is that right?
A Yes.
Q Is it accurate to say that, although they were the lead investigative agency, they too like you were still acting on behalf of the OGE?
A Yes.
Q So is it fair to say that the Treasury Department's IG office really was acting as an agent for the Office of Government Ethics conducting the investigation?

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A That is probably a fair characterization.
Q And that your office, the IG for the RTC, was acting almost as an agent for the Treasury IG?
A Well, we were assisting them.
MR. O'CALLAGHAN: Neal, I just wanted to ask a clarifying question. Are you using "agent" as a legal term, as you understand the legal term? Or how do you understand "agent"?
THE WITNESS: Agents conduct investigations, in a very simple, without all of the legal bells that go with the word "agency."
BY MR. KRAVITZ: (Resuming)
Q The bottom line is that both IGs offices were working for the OGE; correct?
A Yes.
Q And the OGE ultimately was the agency that had been asked by Secretary Bentsen to render an analysis of the ethics' issue.
A Correct.
Q And in a very real sense, OGE actually was working for the Secretary of the Treasury; right?
A They had been requested by the Secretary

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to render an opinion -- advise him as to whether Treasury employees had committed any ethics violations.

Q You testified that the Treasury Department paid for all the deposition transcripts.

Is that right?

A Correct.

Q Did that fact in some way make those transcripts the property of the Treasury Department?

A Well, when you say Treasury Department, I believe it was the Treasury OIG. I don't know that it was the Treasury Department.

Q Let me rephrase it.

Is it your testimony that it is your understanding that the Treasury IG's Office is the entity that paid for the transcripts of the depositions?

A That's my belief, yes.

Q Did the fact that the Treasury IG's Office paid for all the transcripts make those transcripts the property of the Treasury IG's Office?

A I don't know. I haven't thought about

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that.

Q Let me ask you a follow-up question on the third reason you cited as a concern for the transmission of these unredacted transcripts to the White House. That was, that this so-called "privileged information" or RTC information was included in those transcripts.

Do you know of any privileged RTC information that was contained in any of the transcripts that went to the White House that has been used improperly by any White House official since that time?

A No, I don't know.

Q Do you know of any privileged RTC information contained in the transcripts that went to the White House on July 23, 1994, that has been used improperly by anyone since that time?

A No.

Can I talk to my counsel for a second?

MR. KRAVITZ: Sure.

(Discussion off the record.)

MR. KRAVITZ: Back on the record.

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BY MR. KRAVITZ: (Resuming)
Q Mike asked you earlier a whole series of questions about the length of time that you all had to conduct the investigation of White House-Treasury contacts back in July of 1994.
I believe you testified that everyone who you thought should be deposed was deposed.
Is that correct?
A Right.
Q Are there any corners that you were forced to cut as a result of time restrictions?
A I think there were interviews in which the agents would like to have had more time to prepare for them, but the questions did get asked.
Q The questions in all necessary areas were asked of each witness, to your knowledge?
A To my knowledge.
Q Do you have any reason to believe that, had the OGE offices had additional time to conduct their investigation that their factual conclusions would have been any different?
A No.

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Q Do you have any reason to believe that OGE's analysis would have been any different had the IG offices had additional time?
A No.
Q Mr. Blight, I have in front of me a copy of the transcript of the deposition of Gwyon Curtis from July 8, 1994, conducted by Sara Herlihy and Joan Dwyer. Those are members of the Inspector General's Staff?
A Um-hmmm.
Q I think you need to articulate.
A Yes.
Q Those are both RTC-IG employees?
A Yes.
Q On page 44, which is the last page of the transcript, the testimony goes as follows:
"Question by Ms. Dwyer:
"Q We appreciate your cooperation today and request that you keep the discussion with us confidential.
"A [of Mr. Curtis] Okay.
"Q However, there are other ongoing

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lawful investigations concerning these matters and we encourage you to cooperate with them. Our request that you keep our discussion confidential is not a request that you not answer questions about the underlying facts from other investigators.

"A Okay. I understand that."

Now is that the type of request that you testified about earlier having been given to the witnesses whose depositions were taken?

A Yes.

Q In other words, it was a request to cooperate with other ongoing investigations but otherwise to keep the information confidential?

A That's correct.

MR. GIBSON: Can I ask a clarifying question here?

MR. KRAVITZ: Sure.

MR. GIBSON: Was that sort of advisement given to RTC employees? Or was that given to all people who were interviewed?

THE WITNESS: That was given to all people

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who were interviewed. Pat Black drafted that up. We were concerned about -- we couldn't tell the people not to talk to anybody else because we knew that there were other investigations going on, but we wanted what they talked to us about held confidential.

MR. GIBSON: Okay, but the same confidentiality request was essentially given to people whether they worked for the RTC, or the Treasury Department, or the White House?

THE WITNESS: Correct.

MR. GIBSON: Okay.

BY MR. KRAVITZ: (Resuming)

Q Now your testimony earlier was that RTC IG investigators conducted the depositions of RTC officials.

Is that right?

A I may have said that.

Q Is that accurate?

A What the intention was, what I meant to say -- I don't remember what I said earlier -- but that the RTC agents would take the lead on the RTC employee interviews.

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I mean, we had some interviews of RTC employees where a Treasury agent was present.
Q Were RTC IG investigators present for any of the depositions of Treasury officials?
A Yes.
Q How about for the depositions of White House officials?
A Also there, too.
Q Were they participating by asking questions? Or were they simply present?
A No. They were asking questions.
Q And to your understanding, a similar request for confidentiality was made of all witnesses whose depositions were taken?
A That's correct.
Q When I say "similar request," I mean a request similar to the request I just read from the Guyeon Curtis transcript.
A That's what I assumed you meant.
Q Now when transcripts were provided to the witnesses themselves, those transcripts were unredacted?

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Is that right?
A That's correct.
Q What was the purpose for providing deposition transcripts to the witnesses themselves?
A To have them given them the opportunity to review them and to determine if that's what actually was said, or there needed to be what you refer to as an errata sheet.
Q And is it your understanding that transcripts were given to all witnesses, not simply to the RTC officials?
A It is my understanding they were given to all witnesses.
Q And all in unredacted form?
A Correct.
Q And your memory of the transmittal note that went along with those transcripts from Lew Sherman is that there was no further request for confidentiality?
Is that right?
A I would have to check the note because I

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really don't remember at this point.
MR. GIBSON: Let me ask a clarifying question here, if I may, sir?
MR. KRAVITZ: Sure.
MR. GIBSON: Clark, when you testified that the transcripts in unredacted form were given to the witnesses, were you saying that the transcripts of each witness's testimony were given to that witness?
THE WITNESS: They were given their own, and nobody else's.
MR. GIBSON: Thank you.
MR. KRAVITZ: Thank you for that clarification.
BY MR. KRAVITZ: (Resuming)
Q Now you testified earlier about a meeting that you attended -- well, strike that.
You testified about a telephone conversation that you had with Mr. Cottos on July 26th in which you learned for the first time that transcripts had been released to the White House three days before then.

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Is that right?
A Um-hmmm.
Q Did --
A Yes.
Q Did Mr. Cottos indicate to you what the purpose was for those transcripts having been provided to the White House on July 23rd?
A I don't recall.
Q You also attended a meeting at the RTC IG's office at which Mr. Cesca informed a number of people about the White House receiving the transcripts on July 23rd.
Is that correct?
A Yes.
Q That meeting occurred when?
A The morning of the 26th.
Q At that time did Mr. Cesca indicate the reason why those transcripts had been sent to the White House?
A I believe he did, but I don't recall now what he said.
Q Do you have any recollection of what

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anyone else said at that meeting about why the transcripts were provided to the White House?
A You testified earlier that on July 23rd a draft report was provided to Secretary Bentsen.
Is that right?
A No, I don't believe I said July 23rd. July 22nd.
Q July 22nd? Okay.
Now which report was that a draft of?
A It was a draft of the investigative report. It was a draft that we ultimately expanded and made the final report the following week.
Q Why was that draft presented to Secretary Bentsen on July 22nd?
A I believe the Treasury Department felt that by issuing the report -- the draft at that time that it would fulfill its responsibilities to get him a report prior to the hearing.
Q So that he could prepare his own testimony?
A Correct.
Q Was anyone other than Secretary Bentsen

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provided with that draft on July 22nd, 1994?
A I don't know.
Q You don't know whether a copy of that draft went to the OGE, for example?
A It did -- excuse me. It did go to the OGE. I don't know if it went to anybody else in Treasury. It did not go to anybody else in RTC.
Q And no deposition transcripts were appended to the draft report that went to Secretary Bentsen on July 22nd?
A Correct.
Q And you said that your understanding of the reason why no transcripts were sent along with the draft is that the Treasury Department already had some transcripts?
A Correct.
Q Which transcripts did the Treasury Department already have?
A I don't know.
Q Did the Treasury Department have transcripts of depositions of RTC officials as of July 22nd, 1994?

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A I don't know what they had.
Q Did the Office of Government Ethics get transcripts on July 22nd?
A We were giving the Office of Government Ethics transcripts as we went along during the investigation so that they could review them and provide us input.
Q And they were getting unredacted copies?
A Yes.
Q I am going to show you a document that has a Bates No. 06083, and it appears to be a half a page of handwritten notes dated July 6th, 1994.
Do you recognize that?
A It's not mine.
Q Do you know whose handwriting that is?
A I believe it is Steve Switzer's.
Q Let me just read a portion of these notes to you. I understand they are not your notes, but it says as follows:
"They have reasonable argument" and I believe it is clear in context that the 'they' is the White House "if they wanted to get info on

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interview" -- well, let me start over.
"They have reasonable argument if they want to get info on interview. If they interview RTC people, it will be viewed as pressuring them. On the other hand, if they get our transcripts, it will appear that they're interfering with our investigations. Tough situation."
Were you ever part of a conversation with Mr. Switzer or anyone else at which these sentiments about the reasonable of the White House request for transcripts was discussed?
A I believe on the 5th when we had that meeting with the Treasury IG the subject of that came up, and we didn't feel it was appropriate for them to have the transcripts while we were conducting an investigation.
Q Who was articulating the position that found its way into Mr. Switzer's notes that the White House had a reasonable argument?
A Well, you read probably from the last half of that. What does the first half say?
Q I will read you everything I have got.

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The first half says:
"Big discussion about providing copies of statements. White House interviewees can share their statements with them; it is up to them. They can't get transcripts from us on Treasury and RTC people."
And then it goes into what I read previously.
Do you remember any discussion during that meeting on July 6th -- or is this the meeting on July 5th?
A July 5th.
Q I'm not sure why this is dated July 6th, but do these appear to be notes from the July 5th meeting you've testified about previously?
A Well you'll have to ask him. I mean they are his notes.
Q Well you did have a discussion on July 5th regarding whether the White House could get deposition transcripts in advance of the --
A I believe we did.
Q -- in advance of the release of the final report.

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A They wanted them as we went along.
MR. KRAVITZ: I think the previous page shows what the meeting was, or what the notes were from.
THE WITNESS: Well, okay, if it is dated the 6th --
MR. KRAVITZ: It is dated the 6th and it says "Pat's meeting at the White House."
MR. GIBSON: And 7/5 was the meeting, it looks like.
MS. FISHER: Correct.
THE WITNESS: My understanding is -- I mean, the White House had a difficult situation in that they were under a short time frame to finish this -- to get their witnesses interviewed also, and they wanted to try and leverage what we were doing.
BY MR. KRAVITZ: (Resuming)
Q Now Mr. Switzer's notes say, "White House interviewees can share their statements with them -- it's up to them".
Now am I correct to interpret that line to mean that it is understood that the White House

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witnesses were free to share their own deposition transcripts with other White House witnesses?

A Once you give somebody a document, you lose control of it. Okay? So once we gave it to them to look at, we had no control over what they did with it.

Q Well did your office take any steps to prevent White House witnesses from sharing their deposition transcripts with other White House witnesses?

A I don't recall if we did take an affirmative position; I don't remember.

MR. O'CALLAGHAN: Just to clarify, do you know for a fact that "can share their statements with them" refers to other White House officials in this note?

THE WITNESS: Can I see the note?

(Handing document to the witness.)

THE WITNESS: This is not my note.

MR. O'CALLAGHAN: That is why I am asking if you understood the question, if that was a fair

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characterization.

MR. GIBSON: Can we see the previous page of the note, also?

(Handing document to the witness.)

BY MR. KRAVITZ: (Resuming)

Q The question is, do you know what "them" refers to?

Do you have certain knowledge of it, first?

(Discussion off the record.)

THE WITNESS: I don't know.

BY MR. KRAVITZ: (Resuming)

Q I am going to show you a document which unfortunately has no Bates stamp to it, but it is dated June 27, 1994, on Department of the Treasury stationery, Memorandum for Jean Hanson from Robert Cesca, Subject: Provision of Legal Advice and Services to OIG.

It is a one-page document.

Is this the memo that you testified about earlier that was intended to insulate Francine Kerner from the Office of General Counsel at the Department

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of the Treasury?
(Handing document to the witness.)
A Yes.
Q To your knowledge, did Ms. Kerner ever violate the terms of Mr. Cesca's July 27th, 1994, memo to Ms. Hanson?
THE WITNESS: Can we go off the record a second?
(Discussion off the record.)
THE WITNESS: I don't know.
BY MR. KRAVITZ: (Resuming)
Q So you don't know of any evidence that Ms. Kerner ever gave to the Office of General Counsel at the Department of the Treasury any information about the IG office's investigation before the report was released?
THE WITNESS: Can we go off the record?
MR. KRAVITZ: If you want to talk to your lawyer, we can go off the record.
(Discussion off the record.)
THE WITNESS: We can go back on the record. The answer is "yes."

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BY MR. KRAVITZ: (Resuming)
Q What is that evidence?
A Well, I have recently become aware of a conversation -- and this is not first-hand information -- but that Francine Kerner had provided information to Mr. Schmalzbach during the course of the meeting --
Q During the course of the meeting?
A -- during the course of the meeting we were having regarding the investigation.
Q First of all, who told you that Ms. Kerner provided this information to Mr. Schmalzbach?
A We do not know this with absolute certainty, but the circumstances are such that we believe it to be true.
Q That wasn't my question.
A Pat Black.
Q When did Ms. Black tell you this?
A This past summer.
Q The summer of 1995?
A Correct.

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Q What exactly did Ms. Black tell you?
A The time could be earlier, February, but anyway in 1995.
Q What did Ms. Black tell you?
A Can we go off the record a minute?
MR. KRAVITZ: If you need to talk to your lawyer, we can go off the record, but otherwise --
THE WITNESS: I need to talk to him.
MR. KRAVITZ: That is fine.
(Discussion off the record.)
THE WITNESS: Back on the record.
She was interviewed at the Independent Counsel's office --
MR. GIBSON: Ms. Black was.
THE WITNESS: -- Ms. Black, and was shown a document, which was an E-Mail, I believe the way she described it, from Mr. Schmalzbach to Mr. Knight, stating that Ms. Kulka was angry over the fact that Mr. Cutler had the transcripts -- this occurred on the 26th of July, by the way; isn't that when Mr. Cutler testified? -- and that Ms. Kulka was going to complain or go public, something like that; that

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doing that would compromise the RTC investigation; and that somebody needed to call Mr. Ryan, not Mr. Adair.
BY MR. KRAVITZ: (Resuming)
Q I am not following you. How does this information indicate that Ms. Kerner --
A There was a --
Q Let me finish the question so the transcript makes sense.
How does this information indicate that Ms. Kerner violated the dictates of Robert Cesca's June 27, 1994, memo to Ms. Hanson?
A Well, first of all, that memo addresses -- your question did not ask me about, without his specific authorization.
Q Why don't you read the full sentence that you are saying has violated --
A Neither Ms. Kerner nor her staff will communicate any information about the substance of this inquiry without specific authorization from the Inspector General.
Q And you were just reading from the June

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27, 1994, memo from Cesca to Hanson?
A Correct.
Q How was that rule violated by what you have just told us you learned from Ms. Black?
A The call was made, or it seems the time on this E-mail is within minutes after a call was made from one of our telephones to Mr. Schmalzbach's office, and it is our recollection that Ms. Kerner used the phone at around this time.
Q It is whose recollection?
A Ms. Black's.
Q So it is not your recollection?
A No.
Q It is Ms. Black's recollection that Francine Kerner used the telephone on July 26th, 1994 --
A Correct.
Q -- at around the time that an E-mail was later sent to the Department of Treasury?
A A few minutes before.
Q Have you talked to Ms. Black about this?

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A Yes.
Q You have?
A Yes.
Q Did Ms. Black indicate to you whether she was able to overhear any part of Ms. Kerner's telephone conversation?
A No.
Q Are there any records at the IG's office?
A There is a record of the phone call.
MS. FISHER: They have it.
BY MR. KRAVITZ: (Resuming)
Q From your office to Schmalzbach's office?
A Yes.
Q What exactly is the information about the investigation that you believe, or that Ms. Black believes was transmitted from Ms. Kerner to Mr. Schmalzbach on July 26th, 1994?
A It has to do with Ms. Kulka's -- the fact that Ms. Kulka was angry over the transcripts being released.
Q Well is it your position that the fact

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that Ms. Kulka was angry about the release of the transcripts related to the substance of the IG's inquiry?

A She's communicating information about the investigation.

Q Let me read to you the sentence that you read before:

"Neither Ms. Kerner nor her staff will communicate any information about the substance of this inquiry without specific authorization from the Inspector General."

That is what the June 27, 1994, memo from Cesca to Hanson says, correct?

A Um-hmmm; yes.

Q It is not your testimony that Ms. Culca's anger about the release of transcripts has anything to do with the substance of the inquiry into White House-Treasury contacts, is it?

A I believe her anger had to do with the fact that there was privileged material in the transcripts that got released.

Q Would you agree with me that the

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substance --

A -- got released; the substance of the investigation, I believe.

Q Wasn't the substance of the investigation whether there had been improper contacts between White House and Treasury or RTC officials?

A I think this is related to the substance of the investigation.

Q Other than what you have just testified about having learned from Pat Black earlier this year, do you have any other indication or evidence that the requirements of the June 27, 1994, memorandum from Cesca to Hanson were not followed by Ms. Kerner?

A (Pause.)

At this time the answer would be, no; I can't remember some of the things that Mr. Cottos had told me.

Q Now you testified earlier that when you spoke with Dick Kiel of the Associated Press, I think you said it was on April 24th, 1995, that you became

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aware that Mr. Kiel had a copy of this June 27, 1994, memorandum.
Is that correct?
A Yes.
Q Do you know how that happened?
A I don't know how he got it, no.
Q Now this would be a confidential document, as well, wouldn't it?
A It would be.
Well, I don't know how Treasury would treat it.
Q Do you know how this document -- you don't have any idea how this document got into the possession of that AP reporter?
A I have no idea.
Q Going back to your conversation with Pat Black earlier this year, your testimony is that she told you she had been shown an E-mail when she was at the Independent Counsel's office.
Correct?
A Yes.
Q Now have you testified or been interviewed

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by the Independent Counsel's office?
A Yes.
Q Were you asked by the Independent Counsel's office not to discuss your testimony with other officials of the RTC or other possible witnesses before the Grand Jury?
A No.
Q Do you know whether Ms. Black was?
A I don't know.
MR. GIBSON: Excuse me. Let me clarify something here. Was there any testimony that was given before a Grand Jury?
THE WITNESS: No.
MR. GIBSON: The testimony was given during the course of interviews only?
THE WITNESS: Correct. Correct.
(Pause.)
MR. KRAVITZ: I think that is all we have got. Thanks.
MR. O'CALLAGHAN: I am going to ask a couple of quick follow-up questions in response to some questions you had. We will be glad to let you

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make a statement after that.
THE WITNESS: I have one thing I want to say about one of his questions.
MR. KRAVITZ: Why don't you do that first.
MR. O'CALLAGHAN: Go ahead.
THE WITNESS: You asked a question about -- it had to do with sharing information with somebody else conducting an investigation, or something like that, and I think where you were headed on that question was that the White House was conducting an investigation?
MR. KRAVITZ: I don't have to answer questions in a deposition.
THE WITNESS: That's true --
(Laughter.)
THE WITNESS: Okay.
There was some discussion. That was Francine's position in the meeting on July 5th that Treasury or that the White House Counsel's Office is conducting an investigation, and they are almost -- that they are acting like us in this matter, and that we could treat them like an IG and share information

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with them.
Our position is: No, we couldn't because the Treasury-White House Counsel's office is representing the people that are a part of this investigation and that they are not an equivalent IG. So we did not feel that it was appropriate to share information with the White House counsel's office during the investigation.
BY MR. KRAVITZ: (Resuming)
Q What makes you say "the Treasury-White House Counsel's office" was representing the witnesses?
A Because the White House Counsel's office, well, their client is the President.
Maybe I misstated that a little bit. Okay?
Q What did you mean by that?
Didn't the White House witnesses, the White House officials who were deposed as part of the IG's investigation have their own private lawyers?

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A They had their own private lawyers.
Q And in fact you testified earlier that those White House officials were not permitted to have White House counsel's office lawyers present during those depositions; correct?
A Yes. We did not view the White House counsel's office as functioning as an IG, though. So that is why we didn't --
Q I am just trying to figure out what you mean when you said that the White House Counsel's office was representing --
A I misstated --
Q -- the White House officials.
A I misstated that.
Q Well, I guess I don't understand. That was your whole point --
What was your point?
MR. O'CALLAGHAN: Maybe I can help clarify --
MR. KRAVITZ: Well, I am asking a question.

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THE WITNESS: Well, the client is the White House, the President.
BY MR. KRAVITZ: (Resuming)
Q Right.
A And the substance of the investigation had to do with contacts between the Treasury and the White House. We felt it was inappropriate for the White House to be receiving information during our independent investigation.
Q Because the White House counsel's office was not like an IG's office?
A Correct.
MR. KRAVITZ: Okay. Go ahead.
FURTHER EXAMINATION
BY MR. O'CALLAGHAN:
Q Just a quick follow-up to that subject, did you also have the same view of Treasury's General Counsel's office? You didn't view them as an IG as well, did you?
A They are not an IG.
Q Do you have a similar view of the Treasury General Counsel's office and White House counsel's

office in respect to the investigation and sharing information with them?

A Well, the head of the Treasury counsel's office was one of the subjects of the investigation, and so we thought it was inappropriate to be sharing information with them.

Q With regard to the redactions that were made in the transcripts, did RTC IG view the redactions that were made as a confidential or privileged information with regard to investigations that they were conducting at the time?

A Did we -- well, what we will do, when we have issued a report and we get a request for a public -- or we get a Freedom of Information request, we will, if there is RTC material in the report, we will give that material to the RTC Legal Division FOIA experts and ask them to review it for privileges.

MR. O'CALLAGHAN: I have no further questions.

(Whereupon, at 2:10 p.m., the deposition was adjourned.)

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, JANE W. BEACH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Jane W. Beach

Notary Public in and for the
District of Columbia

My Commission Expires NOVEMBER 14, 1996

OFFICE OF
INSPECTOR
GENERAL

RESOLUTION TRUST
CORPORATION

Counsel to the Inspector General

November 6, 1995

Alfonse M. D'Amato, Chairman
Special Committee to Investigate Whitewater Development
Corporation and Related Matters
534 Dirksen Office Building
Washington, D.C. 20510

Dear Chairman D'Amato:

On behalf of Clark W. Blight, enclosed is an errata sheet reflecting changes to the transcript of his deposition taken by the Staff of the Special Committee on October 10, 1995. In light of the fact that hearings are scheduled to commence tomorrow, I have taken the liberty, by copy of this letter, of providing a copy of the errata sheet directly to Alice S. Fisher, Associate Special Counsel to the Special Committee, and to Neil E. Kravitz, Principal Deputy Democratic Special Counsel.

Pages 71 through 73 of Mr. Blight's deposition reflect a discussion leading to a request by Mr. Kravitz for information concerning certain documents. This information was provided to the Special Committee on October 11, 1995. Page 136 of Mr. Blight's deposition reflected a request by Mr. Kravitz for further information concerning the time and identity of interviews conducted in connection with our investigation. This information was also provided to the Special Committee on October 11, 1995.

Please contact me on 703-908-7807 should the staff have any questions regarding the enclosure.

Yours very truly,

Fred W. Gibson, Jr.
Senior Attorney

cc: Clark W. Blight, Assistant Inspector General for Investigation
Alice S. Fisher, Associate Special Counsel
Neil E. Kravitz, Principal Deputy Democratic Special Counsel

1735 N. Lynn Street ▪ Rosslyn, VA 22209

DEPONENT Clark W. Blight (October 10, 1995)

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
1		Delete "Fred Gibson, Esq." as majority counsel		
		Add "Fred W. Gibson, Jr., Esq.		
		Office of the Inspector General		
		Resolution Trust Corporation		
		1735 N. Lynn Street		correct the record of appearances
		Rosslyn, VA 22209		
		On behalf of the Deponent."		
		below "On behalf of the Committee."		
12	7	Sarah	Sara	spelling
15	16	A 2nd March	On March 22	transcription erro
22	6	Sarah	Sara	spelling
22	8	Kados	Cottos	spelling
22	15	Kados	Cottos	spelling
35	17	Kados	Cottos	spelling
41	12	Kados	Cottos	spelling
43	6	Sarah	Sara	spelling
56	1	Kados	Cottos	spelling
56	10	25th	prior weekend	date is incorrect; deponent is not certain what was said about the specific date

DEPONENT Clark W. Blight (October 10, 1995)

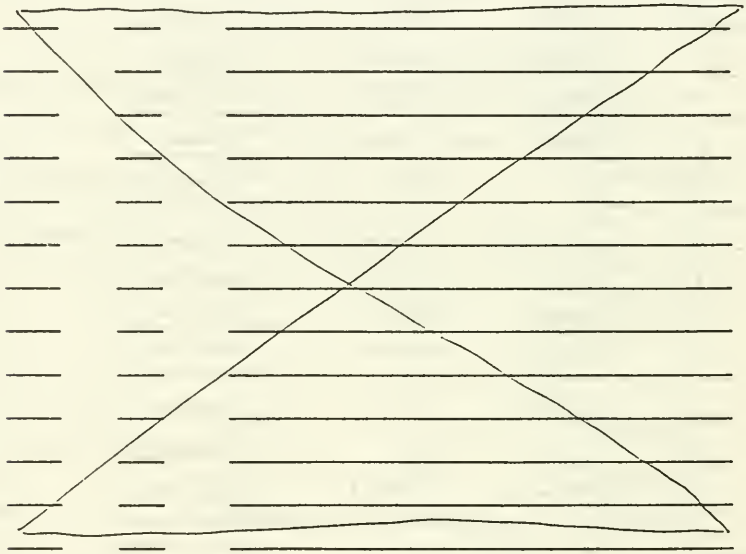
ERRATA

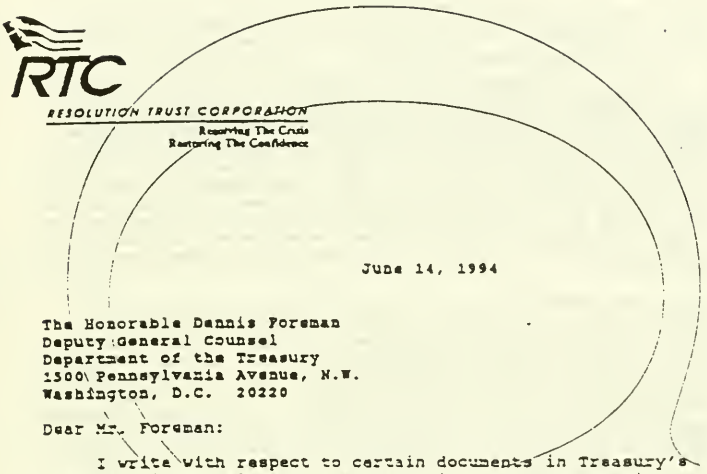
PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
63	17	Kados	Cottos	spelling
64	5	Kados	Cottos	spelling
65	14	Kados	Cottos	spelling
70	7	Kados	Cottos	spelling
89	22	Kados	Cottos	spelling
92	9	Kados	Cottos	spelling
103	22	Kados	Cottos	spelling
104	6	Kados	Cottos	spelling
108	1	delete " before "Francine		grammar
113	3	No	I don't know	transcription error
115	18	obligations	allegations	transcription error
116	9	Heinz	Hindes	spelling
119	1	Randy	Randi	spelling
150	6	Gwyon	Glion	spelling
153	18	Guyeon	Glion	spelling
157	3	A	Q	transcription error
171	15	Culca's	Kulka's	spelling

DEPONENT Clark W. Blight (October 10, 1995)
Page 3 of 3

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
86	4	delete "referencing"		transcriotion error
86	5	delete "of"		transcription error
86	5	insert "and is referencing how" after the word "Counsel"		transcription error
86	5	delete comma after "IG"		transcription error





June 14, 1994

The Honorable Dennis Foreman
Deputy General Counsel
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Mr. Foreman:

I write with respect to certain documents in Treasury's possession that relate to the Resolution Trust Corporation ("RTC").

Treasury General Counsel's Office, specifically Kenneth R. Schmalzbach, Steve McHale and you, ("Treasury's counsel") have informed the RTC that several parties, including Treasury's Inspector General, the Office of Government Ethics and the White House, have requested access to and copies of documents produced by Treasury in response to a subpoena from Special Counsel Robert B. Fiske, Jr. issued on March 4, 1994 (the "Total Treasury Production"). We also believe other parties have requested access to those materials in the past few weeks.

On or about May 12, 1994, Treasury's counsel contacted the RTC with respect to the Total Treasury Production. They advised us that they considered a small fraction of the Total Treasury Production to be "RTC documents." At that time, we advised Treasury counsel that any documents located at Treasury which are RTC documents retain their character as such and any disposition of them or production within the administrative branch or otherwise therefore requires the consent of the RTC. We informed Treasury counsel that we sought access to any documents from the Treasury Total Production that might be RTC documents as well as an agreed upon methodology for identifying those documents from among the Total Treasury Production.

After several discussions, Treasury counsel allowed RTC counsel to review those documents which Treasury counsel characterized as "RTC documents." RTC's review was limited to

on-site examination of the documents -- even though Treasury counsel acknowledged that the documents initially shown to the RTC were "RTC documents."

In our conversations with Treasury counsel, they indicated that the number of documents actually produced pursuant to the subpoena, (the Total Treasury Production), and shared with the White House, far exceeded the number they segregated and made available for the RTC's review as "RTC documents." After the RTC had lengthy discussions with Treasury counsel and Treasury counsel had consulted with Mr. Fiske, last week, Treasury counsel permitted the RTC to review any documents which were produced to Mr. Fiske and which Treasury counsel deemed to be "arguably RTC documents." Again, the RTC was not permitted to obtain copies of these materials.

I write because I am still concerned about the documents produced to Mr. Fiske which Treasury has not permitted the RTC to review. I am particularly concerned because it is not at all clear how Treasury counsel determined whether a document was an "RTC document," "arguably an RTC document," or a purely "Treasury document" with no inherent RTC identity. I note, with some concern, that our review of those materials to which we have had access leads us to believe that substantial additional "RTC" materials are either in the possession of Treasury and/or are part of the Total Treasury Production.

This letter constitutes a formal request for a definitive index of the balance of the Total Treasury Production and a clear understanding of the methodology by which Treasury counsel categorized those records. Such an index is required to enable the RTC to identify which documents are in fact "RTC documents," and, in turn, which documents should be disclosed to requesting parties. A clear resolution of the methodology issue is necessary because we believe from the general discussions held among counsel that many categories of documents, such as those created by our then Interim CEO and others assisting him in carrying out his RTC duties, relate to RTC business, and therefore are "RTC documents."

Moreover, in order to effectively review those documents which are deemed "RTC documents" and to determine whether the documents should be disclosed to requesting third parties -- we must be provided with copies of those documents. We believe that Treasury's refusal to provide the RTC with copies of "RTC documents" is without merit. Such a prohibition obviously inhibits the RTC from making a reasonable and expeditious determination of the appropriate handling of those documents. We have continuously requested such copies over the last month but our request has not been granted.

Furthermore, with respect to the materials produced by individual Treasury employees to Mr. Fiske pursuant to subpoenas, or such materials that may be or may have been produced by those individuals to third parties, to the extent those documents do

not overlap with the Total Treasury Production," the RTC requests access to those materials to determine whether they should in fact be disclosed to other requesting parties.

You are hereby formally notified that any disclosure to the White House of documents which are "RTC documents" is unauthorized and may jeopardize the RTC's ability to protect our investigations, our deliberative processes, the attorney client relationship and the privacy of third parties. Treasury's view of the RTC's authority in this matter is apparently based upon a fallacious understanding of the law; Treasury counsel have incorrectly asserted that the RTC is not an independent agency. It is, and as you know, the RTC has an ongoing investigation which has been the subject of much public comment. As you therefore must be aware, a request from the White House, even if the RTC were not an independent agency, cannot be treated as simply a request from the administrative branch.

In addition, as you must also be aware, the RTC is presently a defendant in a lawsuit filed by Representative James Leach in Federal District Court in the District of Columbia before the Honorable Charles R. Richey, Leach v. RTC, C.A. 94-1033/(CRR) (D.D.C. filed May 11, 1994). In that suit, Representative Leach seeks the disclosure of documents relating to Madison Guaranty, Whitewater and other matters under investigation by the RTC and/or Mr. Fiske Jr. According to Representative Leach, he seeks disclosure of RTC's documents primarily to enable him to prepare for Congressional hearings that he predicts will occur sometime in the near future -- but which have yet to be scheduled.

The RTC must comport itself consistently and in accordance with its obligations under the Freedom of Information Act (FOIA), the Privacy Act and its responsibility to provide information in an evenhanded fashion to all inquiring parties. Hence, the RTC must provide the White House, Representative Leach and third parties with the access to RTC documents to which those parties are lawfully entitled. As a result, we seek your cooperation in our efforts to fulfill our obligations with respect to those documents in Treasury's possession for which we have responsibility either to produce or withhold as the case may be.

Moreover, because of the RTC's obligation to maintain control of its own records and comply with various access requirements, Treasury's exclusive possession of a large number of "RTC documents," both relating to Mr. Fiske's investigation and pertaining to other RTC matters poses a continuing problem. Consequently, we also seek copies or originals of all other "RTC documents" and an opportunity to review all "arguably RTC documents" in Treasury's possession. This final request is particularly important since the RTC may not even be aware of the existence of many of the "RTC documents" in your possession.

I also want to emphasize that it has been and remains the RTC's position that its provision of RTC documents to the Treasury does not in any way constitute a waiver of any of its

rights and privileges with respect to those documents. Specifically, we request that no documents which are arguably "RTC documents" in Treasury's possession be disclosed to third parties without the RTC's consent.

Finally, as we have discussed with Treasury counsel, we would like a copy of Deputy White House Counsel Joel Klein's May 12, 1994 letter to Mr. Fiske requesting access to the documents produced by Treasury to Mr. Fiske and authorization to disclose that letter under appropriate circumstances. In connection with this request, we note that much of the contents of Klein's letter was reported to in the media in May 1994.

Here is no letter to Fiske and I have copy of Klein 5/12

This matter, one of grave concern to the RTC, has been unresolved for over a month. Certainly before the end of this week, I hope we can agree to a mutually acceptable process to provide the RTC with appropriate access to its documents and to insure that those documents are only disclosed to third parties in accordance with applicable law.

Sincerely,

Ellen B. Kulka
General Counsel

cc: F. Newman

DEPOSITION OF STEVEN A. SWITZER
IN RE: S. RES. 120

TUESDAY, OCTOBER 10, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of STEVEN A. SWITZER, called for examination pursuant to notice of deposition, at 3:00 p.m. in Room 534 of the Dirksen Senate Office Building before JANE W. BEACH, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, ESQ.
Majority Associate Special Counsel
ALICE S. FISHER, ESQ.
Majority Deputy Special Counsel
NEAL E. KRAVITZ, ESQ.
Minority Principal Deputy Special Counsel
JAMES S. PORTNOY, ESQ.
Minority Associate Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

FRED W. GIBSON, JR., ESQ.
Senior Counsel
Office of the Inspector General
Resolution Trust Corporation
1735 North Lynn Street
Room 1132
Rosslyn, Virginia 22209
On behalf of the Deponent.

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PROCEEDINGS

COMMITTEE CONFIDENTIAL

(3:00 p.m.)

MS. FISHER: Good afternoon, Mr. Switzer. Thank you for coming and joining us this afternoon.

As I told you, my name is Alice Fisher and I am Associate Special Counsel for the Majority. To my left is Michael O'Callaghan, also an Associate Special Counsel. Going down, is Neal Kravitz, Principal Democratic Deputy Special Counsel? Did I get that right?

MR. KRAVITZ: Pretty close.

MS. FISHER: Pretty close.

(Laughter.)

MS. FISHER: And to his left is Jim Portnoy -- I am not going to guess.

MR. PORTNOY: Another Minority counsel.

MS. FISHER: Another Minority counsel.

This deposition is being conducted pursuant to Senate Resolution 120 which establishes a Special Committee administered by the Banking Committee to conduct an investigation involving

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Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority, and other related matters.

Specifically, Section 1(b)(2)(E) of Senate Resolution 120 authorizes an investigation and public hearings into whether the report issued by the Office of Government Ethics on July 21st, 1994, or related transcripts of deposition testimony (1) were improperly released to the White House officials or others prior to their testimony before the Committee on Banking, Housing, and Urban Affairs, pursuant to Senate Resolution 229; or (2) were used to communicate to White House officials or others confidential RTC information relating to Madison Guaranty Savings & Loan or Whitewater Development Corporation.

This will be the focus of today's deposition, although there may be other matters within the Resolution that we ask a few questions about.

I am going to ask a series of questions,

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and I am going to ask you to testify under oath. If you do not understand a question, please let me know and I will rephrase it.

If you need a break, let me know.

The Stenographer will prepare a record of questions and answers, and the deposition transcript will be treated as Committee Confidential until the commencement of the hearings.

MR. SWITZER: Will I be provided a copy?

MS. FISHER: Prior to the hearings you will be able to come to the Senate to review the transcript of the deposition, and you will receive a letter that says where and when to come and how to schedule that meeting. You will at that time be able to fill out an errata sheet if you have any corrections of transcription errors that you recognize.

MR. SWITZER: Okay.

MS. FISHER: During the last round of hearings, the witnesses that were going to be called at the hearings were provided with their deposition transcript to take home with them and review prior to

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the hearings.

I am not exactly sure what the procedures will be for this round of hearings, but again you will be notified by letter probably to Mr. Gibson.

I see you are represented by counsel here today, if you would like to introduce him for the record.

MR. SWITZER: Fred Gibson, who is I guess one of our Assistant Counsel in our office.

MS. FISHER: Would you swear the witness, please.

Whereupon,

STEVEN ANTHONY SWITZER

was called for deposition in the above-entitled matter and, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION

BY MS. FISHER:

Q Could you state your name for the record, please?

A Steven Anthony Switzer.

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Q And your present business address?
A 1735 North Lynn Street, Rosslyn, Virginia.
Q Do you have the Zip Code for that?
A 22209.
Q Could you give me a little bit of information on your employment history and your education?
A Well, I am a graduate of Texas A&M University. I graduated from college in 1966. Upon graduation I went to work for the Office of Inspector General, United States Department of Agriculture, which was a nonstatutory IG at the time.

After one year, I went into the Service for two years.

After getting out of the Service, I went back to work for Agriculture OIG.

In approximately 1971, I believe, I transferred from the Agriculture's Office of Inspector General to the Inspector General's Office at HUD, Housing and Urban Development.

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I worked there for something like 17 years. In September, or August of 1988 I transferred to the Office of Inspector General at the Small Business Administration.

And in April of 1990, I moved into my current position.

Q Which is?
A Deputy Inspector General at RTC's Office of Inspector General.
Q During the period of March to August 1994, could you give me an understanding of what your responsibilities were as Deputy Inspector General at the RTC Office of Inspector General?
A Basically I serve as like an alter ego to the Inspector General, acting in his stead when necessary, and participate in the management of the office overall.
Q Do you supervise?
A There are five Assistant Inspectors General and I supervise all of them -- pardon me, four and a counsel.
Q And do each of the Assistant Inspector

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Generals and the counsel report directly to you?
A Yes. They in essence report directly to both of us, but I serve as their immediate supervisor, if you would.
Q Both you and Mr. Adair?
A Yes.
Q Could you in the period of July '94, could you just tell me who those four Assistant IGs were?
A Yes.
Clark Blight, who you talked with this morning, is the Assistant Inspector General for Investigation.
A lady by the name of Sharon Vander Vennet --
MR. O'CALLAGHAN: How do you spell that, please?
THE WITNESS: Two words, V-A-N-D-E-R V-E-N-N-E-T, is the Assistant Inspector General for Audit.
Robert McGregor is the Assistant Inspector General for Oversight and Quality Assurance.
And Rex Simmons is the Assistant Inspector

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General for Management and Policy.
BY MS. FISHER: (Resuming)
Q And the counsel?
A Is Patricia Black.
Q Is there anyone other than Mr. Adair that you reported directly to?
A No, there is not.
Q Are you aware of the Committee's document request to the Office of Inspector General of the Resolution Trust Corporation of this year?
A Yes, I am.
Q Did you search for responsive documents, notes, reports, memoranda, in response to that request?
A Yes, I did. I provided everything we could find.
Q You are not aware of any responsive documents being withheld?
A No, I am not.
Q Did you speak to anyone other than your counsel prior to this deposition?
A No.

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Q About the substance of this deposition?
A (Interposing) I mean we -- not in our office, no.
Q Could you just give me a little bit of background on the Office of Inspector General and how it is separate and distinct from the Resolution Trust Corporation, or the main RTC. I don't know how you refer to it.
A Well, of course our role in the RTC is, as it is in any other federal agency, to do all the audit and criminal investigative work associated with the RTC's activities.
We are independent of, although we are a part of, the corporation. We have one particularly unique thing about us is that we are separately appropriated rather than funded with corporate money.
Q So who for example is it within the RTC OIG employees that make, for example, payroll decisions for the IG's office?
A Yes, we do.
Q Is it --
A That's within the IG. In other words, we

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make all personnel decisions associated with our staff.
Q Does the CEO of the RTC, or the Legal Division of the RTC, the main RTC, generally review the work of the Office of Inspector General?
A They may see our work. They do not necessarily have any review or say-so, if you would, over it.
In other words, copies of all of our reports, for example, all our audit reports, go to the CEO for his information; copies of our reports that might pertain to law firms that we audit would go to the Legal Division.
Q Are they generally, the Legal Division or the CEO of the RTC, generally advised of ongoing investigations?
A Not the Legal Division. In any normal course of business, depending on the significance of a particular investigation, we may advise the CEO that we have simply initiated such an investigation, and that is merely for his information. That is all we tell him is, basically, we have received

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allegations concerning A, B, C or D, and that we will be looking into it, in case he hears something about it.

Q Okay. But he is not generally advised what the substance of the ongoing investigation is?

A He is not.

Q Are there any employees of the Office of Inspector General of the RTC that have kind of a dual responsibility in that they report to the OIG and main RTC, whether it be the Legal Division or the CEO?

A Not to my knowledge.

Q Moving into the review that was conducted of the White House-Treasury contacts relating to RTC confidential information, and that review being conducted by the Office of Government Ethics, could you tell me when you first learned of that investigation, or that review?

MR. GIBSON: Do you mind if I --

MS. FISHER: At this point did you want to make your statement? That was a poorly worded question, anyway.

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(Laughter.)

MR. GIBSON: This is Fred Gibson from the Counsel's Office in the IG. I just wanted to interject at this point in time that the RTC Office of Inspector General has produced documents to the Senate Special Committee which may be discussed during the course of this deposition.

For the record, the Office of Inspector General reasserts any privileges claimed by it or on behalf of any other agency with respect to public disclosure of these documents under the Freedom of Information Act, the Privacy Act, or as otherwise enumerated in the materials transmitting the documents to the Special Committee.

Thanks.

MS. FISHER: Thank you.

THE WITNESS: If you would ask the question again, please?

BY MS. FISHER: (Resuming)

Q When did you first learn of the RTC Office of Inspector General's participation in the Office of Government Ethics' review of White House-Treasury

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contacts?
A It would have to go back to sometime in -- well, I will refer to a chron, which is your Bates No. 25252:
In March, March 22nd, we had a meeting with OGE. So I would assume it was within a few days of that that this issue surfaced. The purpose of this meeting was in essence that we -- OGE sensed that they were going to get asked questions about this, and whether -- they were doing some preliminary groundwork in terms of whether we could provide investigative assistance when they got involved in that.
Q Would you identify exactly what that document is, other than the Bates number?
A It is simply a chronology of this that was prepared by our office.
Q I can't help but to notice that you have some handwritten notes on there --
A Right.
Q -- and I assume that those --
A Those have been added today.

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Q Today?
A You can have a copy of this.
Q That would be great, if we can just make a copy of that.
MS. FISHER: Is that okay with you?
MR. GIBSON: That's fine. If I could interject again, this is the same chronology, with the exception of Steve's handwritten notes, that Mr. Blight used during the course of his testimony this morning.
BY MS. FISHER: (Resuming)
Q And what is your understanding of who prepared this document?
A I believe it was prepared by Pat Black.
Q Did you have any input into the preparation?
A My calendars were used for part of the purposes of it.
Q At this March 22nd, 1994, meeting between members of the Office of Government Ethics and members of the Office of Inspector General RTC, can you tell me who exactly attended this meeting?

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A According to the chronology it was Jane Ley, who works for the Office of Government Ethics; somebody named "Rick," whose name, first name I don't recall; Pat Black; Clark Blight; myself; and Jack Adair, my boss.

Q Do you have any independent recollection, other than the chron, of anyone else that might have been there?

A Not -- no, I don't.

Q Could you tell me what the substance -- what substance was discussed at this meeting?

A Only from vague recollection. It was -- in other words, they were, like I said awhile ago, they were anticipating being asked questions about this. They had no, the Office of Government Ethics has no investigative staff of its own, and therefore they were asking whether we would be able to provide them any assistance as it relates to the RTC's involvement in this thing.

Q Was it your understanding that the Office of Inspector General of the Department of Treasury had also been asked to assist in this investigation

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at that March meeting?

A I don't, once again, have a specific recollection, but I suspect that they were because I want to say I recall that there was a similar meeting, or the people from OGE said they were going to have a similar meeting with the Treasury IG people.

Q Was the scope of the investigation discussed at this meeting?

A Not to my recollection.

Q Did the OGE discuss any instructions they might have for the OIG RTC at this meeting?

A I don't believe so.

As I recall, they were going to formulate what it was that they would need, or that they thought they would need, to come from the investigation that would allow them to render some sort of a decision.

Q And they would tell you what they needed?

A Right. They would say -- they would provide our investigators guidance, if you would, in terms of what things we needed to pursue.

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Q Is it your understanding that the Office of Government Ethics' review was put on hold due to the request of Independent Counsel Fiske?
A Right.
Q At some point?
A This whole -- I don't recall the exact timing of it, but we had written to the Independent Counsel -- I believe we wrote, or the Independent Counsel asked us, or asked that this whole matter be deferred pending their completion of their review.
So this was simply a preliminary type thing saying we know it is coming; we want to meet all the people who are going to be involved.
Q Were there any discussions at all that you are aware of regarding the decision to put off the investigation?
A None to my knowledge.
Q What is your next recollection of what happened with regard to this investigation or this review?
A I have to say it was when we in essence got the go-ahead from I guess it was Fiske at the

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time saying that they had completed their work and that we could proceed with whatever we wanted to do.
Q Do you recall that that was at the end of June in 1994?
A I want to say the 26th or something like that.
Q Did you participate in any meetings with the Independent Counsel at that time?
A Not at that time, no.
Q Prior to being given what you describe as the go-ahead, were there -- was there anything that the RTC OIG was doing to prepare for this investigation?
A Only from the standpoint of trying to identify staff who would be involved. In other words, which investigators would we use; some logistical things like that, since we were heading into the summer and vacation schedules and such as that, but that's all I recall.
Q Do you recall beginning to collect any documents or things of that type at that time?
A Not specifically, no.
Q Once you again were given the go-ahead,

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what is the next thing you recall relating to this investigation?

A The next thing that involved me, I guess -- well, referring to the chron, we received the request from the CEO, Jack Ryan of the RTC, to go ahead. I believe Ryan received a letter from Secretary Bentsen -- Secretary Bentsen of Treasury -- asking that he request that we also participate because of the involvement of RTC people. So we received that letter on about June 30th.

Q Were you present at the June 23rd meeting at the Office of Government Ethics that is listed here on that chron?

A No, I was not.

Q Did you discuss that meeting with anyone?

A There was probably some discussion with Clark and Patricia when they returned, but I don't have any specific recollection of what it was.

Q You don't recall anything that they told you about what happened at that meeting?

A No; that's right.

Q What is the next meeting that you recall

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once you were given the go-ahead I guess by Ryan on June 30th, as you describe?

A The next meeting that we had?

Q Did you then have a meeting with, for example, Mr. Blight and Ms. Black about what you were going to do to assist?

A Yes. I am sure we were meeting like that. I don't have any specific recollection of what it was. It would have been things like I mentioned awhile ago, trying to identify who was going to do our work for us, and so forth.

The next thing that happened is also recorded here. That is, the July 1 letter to Cutler. I signed that letter, as I recall, and that is where we were requesting documents from the White House.

Q Okay.

What was the substance of that letter that you recall, other than what is written here in the chron?

A Basically we were writing saying that we were going to be involved in conducting this investigation. We asked that they make everybody at

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the White House who had been involved in any of these contacts available to the investigative team for interview, as well as provide us whatever documentation that had any relationship to those contacts.

Q Was --

A That letter was signed by, as I said, myself; I believe it was also signed by Bob Cesca, who was the Acting IG at the time at Treasury. It came from two of us.

Q What is your understanding of who was involved from the Office of Inspector General at the Department of Treasury at that time --

MR. KRAVITZ: "Involved" in what?

BY MS. FISHER: (Resuming)

Q -- in preparing for this investigation?

A Well, it would have been the IG for certain, since I was involved in the preparation -- not the preparation but I signed this letter -- and certainly the Assistant Inspector General for Investigations there.

Q And that was at the time?

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A Jim Cottos.

Q Anyone else?

A I suspect their counsel, but I can't say that with any certainty.

MR. KRAVITZ: Could we just break for a minute to copy the document he has in front of him?

(Discussion off the record.)

BY MS. FISHER: (Resuming)

Q Back on the record.

We have just been provided with a chronology with Mr. Switzer's handwritten notes.

Could you describe for me what is across from 7-1?

A This says "Jack," referring to Jack Adair, "on AL" which means annual leave.

Q Getting back to the individuals that you knew of that were working on this from the Treasury OIG's office, was there anyone else involved at these early stages that you can think of, either from the Department of Treasury or the Treasury OIG's office, or the RTC --

A I'm sure --

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Q IG's office --
A I'm sure --
Q -- that you haven't named?
A None that I can recall from the RTC office that I haven't named. And I'm sure his counsel, Francine Kerner, was involved earlier in the process.
Q Anyone else?
A Not that I recall.
Q What do you understand to be Francine Kerner's position at that time?
A She in essence served as counsel to the Inspector General at Treasury.
Q What do you mean by "in essence"?
A Well, that was her position. She did not work in the Office of Inspector General, so that is why I said "in essence." She worked in the General Counsel's office.
Q Meaning her office was located in that office suite with the General Counsel?
A Meaning that her supervisory chain of command was in the General Counsel's office.
Q Who did she report to?

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Or what was your understanding of who she reported to at that time?
A I don't know who she reported to.
Q Do you recall a meeting that occurred on July 5th, 1994?
A Yes, I do.
Q Could you tell me about that meeting?
A Well, it was in essence what I would call the first overall meeting that we had on initiating the investigation.
Do you want me to tell you the participants from this list, or --
Q Is there anyone who is not on that list that was present at that meeting that you recall and have an independent recollection of?
A No, there was not.
I would point out, though, that actually there are two meetings here. One is at ten o'clock in the morning, and then there is a second meeting referenced at 4:30.
Q Um-hmmm.
A I was not in attendance at the 4:30

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meeting.
Q Okay. But you were at attendance at the ten o'clock meeting?
A Right.
Q Were you there for the entire meeting?
A Yes, I was.
Q Could you tell me what you recall that was discussed at that meeting?
A Like I said, it was a preliminary meeting in that we talked about the request to do the investigation, who might be potential witnesses or contacts.
There was some discussion of I guess the White House documents that had been requested by this earlier letter; and how we were going to set about doing our work, or the investigators were going to set about doing their work.
Q Was there an issue regarding the White House documents that had been produced in response to your letter?
A There was a general discussion. As I recall, I don't know that the documents had been

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produced at that time. I believe they came a little bit later.
There was a discussion, though, in the sense that it came up that Francine Kerner, who I earlier mentioned, was having a variety of conversations with, at that time unknown to me, some White House counsel people.
Q Did you later find out who that --
A Subsequently I -- well, I believe it to be Jane Sherbourne and Shelia Cheston. I believe that's their names.
Q What is your understanding of the substance of the conversations that Ms. Kerner was having with Ms. Sherbourne and Ms. Cheston?
A I guess I'll use the term "negotiating." They were talking about what documents they were going to get, and how they might meet -- there was some discussion of what might happen in terms of interviews of White House people that may have been involved.
Q Could you be more specific?
A I believe it was at this stage of the game

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where we had some discussions about whether there was going to be representatives from White House counsel's office involved during our interviews with these people.

I know I learned of that somewhere in here, and this would have been as good a time as any.

Q And that is, representatives of White House counsel being involved with the interviews of White House employees? Or would that include, for example, Treasury employees and RTC employees?

A As I recall, it was just White House people.

Q Okay.

Was that discussed at this meeting, whether --

A There was some discussion of it. It kind of got curtailed or stopped at some stage of the meeting when we found out that there was going to be another meeting between Francine and Jane Sherbourne and Sheila Cheston at which time Patricia inserted herself into that meeting to attend.

And since there was something else going

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to happen there in terms of them meeting, we would hear back from her --

Q I see.

A -- when that meeting was over.

Q Did anyone from the RTC OIG's office express a view as to whether that was a good idea at this July 15th meeting which started -- or July 5th meeting that started at 10:00 a.m.?

A I don't think we expressed the view that it was a good idea, no.

So the answer to your question is: No, we did not think it was a good idea.

Q You thought it was not a good idea?

A Exactly.

Q Did you express that at the meeting?

A Yes.

There was a general discussion of it in terms of, you know, that we had to conduct this just like we would any normal investigation in terms of following our normal procedures for conducting these investigations, and this would not be part of our normal procedures.

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Q And why is that, if you could articulate it for me?

A Well, employees would be, I guess, would be entitled to counsel, but not necessarily a representative of White House counsel's office. If they wanted their own personal attorneys present, they could do that, which I guess ultimately several of them did.

Q Some of them were represented by their own counsel?

A Right.

Q Are there any other reasons why you thought that that was not a good idea to have the White House counsel sit in on the interviews regarding this particular issue that you were investigating?

A Well, not when they were part of what was being investigated because that was part of the whole investigation, contacts amongst people in the White House.

Obviously, as I recall, I mean it specifically involved people from White House

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counsel's office, or formerly, anyway.

Q Was there discussion either at this meeting, or prior to this meeting, relating to Ms. Kerner's position?

A Yes. I mean, we were -- "we" and I would say Patricia and others of us in our office -- were not comfortable with the concept that she was within the reporting chain, if you would, of the Office of General Counsel at Treasury, and we had concerns with that because obviously the General Counsel at Treasury was one of the targets, if you would, of the investigation, and therefore could conceivably influence Ms. Kerner.

Q Was there also a concern that Ms. Kerner would share information with the Office of General Counsel at the Department of the Treasury regarding the investigation that the two OIG offices were going to conduct?

A Yes, I would have to say that there was. I mean, we did not know, and you cannot speculate what she might have done, but, you know, we were just concerned because of where she was located could

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present a problem, number one, in reality; and number two, could certainly create a perception problem.

Q Were these concerns discussed at all with anybody from the Treasury IG's office, or at this July 5th meeting with Ms. Kerner?

A I don't recall them being discussed at that July 5th meeting. Prior to the July 5th meeting, you asked whether we had discussed it prior to that, and yes, we had.

I believe that my boss spoke with the Acting IG, Bob Cesca, at Treasury on this subject and the concerns that we had, even offering to have Patricia, our counsel, like serve as co-counsel for this whole investigation to avoid that problem, or potential problem.

Q Did Mr. Adair tell you what Mr. Cesca's response was to him?

A I don't recall it. I'm sure that he did. That is what led to -- it's referenced on my annotated chron -- or what we believe what led to what is identified there as June 27th, a letter that was sent from Mr. Cesca to to Jean Hanson, the General Counsel

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at Treasury, concerning how they would evaluate Francine Kerner's performance to help ensure independence.

We believed that that --

Q So it is your understanding that this conversation between Mr. Adair and Mr. Cesca took place prior to the June 27th letter from Mr. Cesca to Ms. Hanson?

A I believe that is true, yes.

Q Later on July 5th, according to your chronology, Ms. Black and Ms. Kerner met with Ms. Sherbourne and Ms. Cheston at the White House.

Did Ms. Black tell you anything about the substance of that meeting, or what was discussed?

A Yes, she did. I don't recall it all crystal clear. I see you have my notes in front of you.

Q I can show you your notes, but I would like to get your independent recollection, if I can.

Q Well, I believe they once again had some discussion of the documents, or how the documents would be controlled. I am not positive that that

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occurred at that time.
They also had some discussion in terms of the witnesses, whether they would have counsel present, I believe, and when and whether they might receive copies of transcripts.
That's some of it.
MR. GIBSON: Alice, if I could interject, I think that meeting was held at the Treasury Department's office, not the White House.
THE WITNESS: Oh, I'm sorry. I did not hear that part of the question. Yes, it was a Treasury.
BY MS. FISHER: (Resuming)
Q Sorry about that.
Is it your recollection that this was the first time that copies of transcripts, as you referred to it, was discussed with regard --
A As I recall, yes.
Q What is the substance of that conversation as Ms. Black told it to you?
A I believe there was some conversation to the effect that they would like to see copies of the

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transcripts. We said, no -- "we" being Patricia -- somewhat adamantly, as I recall, where I believe Francine -- Pat indicated that Francine indicated that she might be a little bit more flexible on the subject, but she certainly understood where we, Patricia, was coming from in terms of our office.
Q Was it your understanding that the White House wanted transcripts of White House employees' interviews? Or would that also include RTC and Treasury employees?
A I don't recall it being delineated. It was just like "all transcripts."
Q Sharing of information?
A Um-hmmm.
Q At this July 5th meeting, was there anything relating to the scope of the investigation that was discussed?
A There were some preliminary discussions of potential witnesses, if you would, or people we were going to interview. We sketched out a list of possible names that we would be talking with, or to try to interview, but beyond that, no, I don't

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recall.
MR. GIBSON: If I could clarify, Alice, are you referring to the July 5th meeting that Steve attended?
MS. FISHER: I am. I apologize.
MR. GIBSON: Thank you.
MS. FISHER: I apologize.
BY MS. FISHER: (Resuming)
Q At that July 5th 10:00 a.m. meeting, were any limitations on the investigation discussed?
A None to my knowledge. I mean it was discussed from the standpoint of we were going to have to hustle right through this thing if we were ever going to finish in time for what was construed as a deadline for this work.
Q Could you elaborate on that, "construed as a deadline for this work"?
A I believe Secretary Bentsen when he requested Treasury to do this said, I would like to have this done by some date certain here in the future prior to the hearings that were scheduled in August, I believe, and so we were trying to respond

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to that in terms of the investigative work.
Q Did you believe that the time constraints were affecting your investigation?
A Not at that time.
Q Did you come to believe that at a later time?
A Subsequently we did. You know, we were having some problems because of the time constraints.
Q What kind of problems?
A Well, I mean our people were working like crazy. They were conducting interviews all day, and trying to read things at night, and that was wearing them out, and plus we found that we weren't sure that they were being able to have enough time to completely prepare for their interviews at that stage. And I think on several occasions we discussed that the speed we were going at could hurt the investigation.
From our standpoint, we were trying to continue to stress that we have to do whatever it is we have to do to do the investigation properly,

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complete, rather than -- I mean, if we didn't finish on time, we didn't finish on time.

Q Do you believe that there would have been a more complete investigation conducted if you had not been under those time constraints?

A I don't believe that we would have found anything more than we did.

Q But you have no way of knowing?

A Huh-uh; right.

Q Did you express your concerns about the time constraints to members of the Treasury OIG staff?

A Yes. It was discussed at -- you know, whenever we had status meetings, there would be some discussion of how we were going in terms of time, things like that.

Q Did they share your concerns?

A I would have to sort of say, yes, they shared our concern, but they seemed to be more -- they seemed to be more concerned with completing their deadline than we were, if you would.

Q And why is that?

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A Well, I guess because their Secretary was the one who asked for the investigation.

Q Did Ms. Black share your concern regarding the speed of the investigation regarding time constraints?

A Yes, I think we all shared it, the concern.

Q Do you recall the meeting that occurred on July 14th at the Office of Government Ethics?

A Yes. At least parts of it.

Q What do you recall about that meeting?

A Well, generally it was kind of like a status of meeting of where we are, and who we had interviewed, and some things like that.

Q Were there any discussions on the scope of the investigation at that time?

A Yes, there were, in terms of, once again going back to who had been interviewed. I believe it was at this meeting the people at OGE had obtained, I recall, FBI 302s, their records of interviews, of a number of people who they had interviewed apparently in connection with a case.

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Q Who OGE had interviewed?
A No, the Independent Counsel had interviewed.
Q Okay. And they provided copies of those to us. And there was some discussion as to whether we could reference the documents in any of our work, and it was subsequently determined that we could not.
But then -- so in a sense, what they provided us there was discussed as how this may or may not help us. And then it was just who else are we going to interview.
One of the people who was discussed -- and I don't know that a decision was made at that meeting or not -- was, for example, wether to interview Secretary Bentsen.
Q Were there any limitations on the investigation or on the scope of the investigation that were discussed around that time frame?
A None to my knowledge; not that I recall. Once again, only time. We were having to go fast.
The other thing that happened at this

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meeting is, which I probably should point out because you will see it in there someplace in terms of the documents you have seen, earlier in this process, and I cannot say a date specific, Francine Kerner wrote the counsel's office in Treasury, and I don't remember who, asking a certain number of legal questions relative to the role of Treasury people in the RTC: What were they -- because they were Treasury employees, for example, Robert Altman and Jean Hanson -- what were their legal capacities that they were in over there.
At this meeting it was suggested by the OGE people that we send a similar memo or letter to the general counsel at the RTC asking the same questions, rather than relying on the statements of general counsel for Treasury.
So I went back and, in essence, participated in crafting that letter since I had been in this meeting, and the letter is in here, and it is signed by David Kuhnsman for Pat Black, and I believe it is addressed to Ellen Kulka.
Q A decision was made to have the RTC

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general counsel look into this issue, rather than, as you characterize it, rely on the statements of general counsel at Treasury?

A Right. In essence we were asking the same questions, or very similar questions, or RTC counsel; but since these people were serving over in capacities at the RTC, we wanted to get the opinion of RTC's general counsel as to what they thought.

Q During the investigation, do you recall any limitations on what types of questions would be asked to witnesses?

MR. KRAVITZ: Alice, I am going to have to object. I have been sitting here for several minutes and you have been asking questions about --

MS. FISHER: This will be the last question I am asking, and it relates to one of his E-mails.

MR. KRAVITZ: Well, let me put my objection on the record. Just the fact that you only have one more question does not make something relevant if it is otherwise irrelevant.

I made this objection this morning during

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Mr. Blight's deposition, and I want to repeat it here. I have read the Resolution quite carefully, and my understanding is that nowhere in this Resolution, S.Res. 120, is this Committee asked to investigate whether the OGE investigation was somehow limited or constrained for any proper or improper purpose.

We are here to investigate whether transcripts were improperly released to the White House, and also whether any confidential RTC information that may have been contained in those transcripts was used improperly.

I just really don't think we should be spending our time on subjects that are not relevant to those issues.

MS. FISHER: Well, I believe that the Resolution also provides for investigation into whether the White House engaged in improper contacts with any other agency or department in the government with regard to confidential RTC information.

And the fact that the RTC Office of Inspector General looked into this topic is relevant,

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and the fact as to what their investigation included is relevant, and the fact to whether that investigation was limited in any way is I believe relevant considering that their investigation dealt directly with White House-Treasury contacts.

But, regardless, I am only going to ask one more question on this.

MR. KRAVITZ: Just so the record is complete, and we said this this morning, the Senate Banking Committee held five very long days of hearings in the summer of 1994, from 9:00 in the morning until often 2:00 in the morning, on the question of -- Mr. Switzer is nodding his head; he obviously remembers that -- on the question of the propriety or impropriety of White House-Treasury contacts.

As far as I understand, there is absolutely no intention of revisiting the merits of that issue in upcoming Senate hearings. That issue has been looked at exhaustively. It is the subject of a several-hundred-page-long report issued by the Banking Committee, and the deposition and hearing

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testimony of IG witnesses, and OGE witnesses has to do with paragraph 1(b)(2)(E) of S.Res. 120, which is what you read to the witness at the beginning of the deposition, and the deposition should be limited to those subjects.

MS. FISHER: The depositions will be limited to what they have knowledge about. Senate Resolution 120 deals with White House contacts with other agencies, not only Treasury.

I believe this information is relevant, and I am going to ask him the question.

BY MS. FISHER: (Resuming)

Q Mr. Switzer, sometime during the investigation on or about July 15th do you recall expressing a view as to limitations that were put on certain questions that would or would not be asked?

A I don't recall the date, but I know what you are referring to.

I believe it was in the Beth Nolan interview there was an issue came up about whether we could ask some particular question about who she told something to, or something along those lines.

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That happened there, and I recall being concerned about it when I first saw it thinking that if it happens there, I think it is going to happen again. Potentially it is going to surface, and we need to figure out what we are going to do about it. I believe that the E-mail you were referring to made reference to, I think it did happen again, but what I'm trying to remember now is who it happened to.

Q Let me let you see the document. It is Bates No. 6087, July 15th, 1994, E-mail from Steve Switzer to Patricia Black.

A Yes. It was the Clifford Sloan interview and my E-mail says that his attorney also raised the issue.

Q Could you explain to me what your concerns were about limiting?

A Well, we weren't going all the way in terms of who told who, and where the information might have gone.

And, what we say here is we agree that we will ask who they told, but not necessarily who was told subsequent to that.

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Q Who made the decision to limit it in that fashion?

A In that second fashion, or the initial fashion?

Q Who they told he told, I believe.

A That would be the second tier.

Q Yes.

A I don't know -- while I say "we agreed," I don't know like there was a decision, per se. I mean, in our minds what we decided was that we were going to keep asking questions and if they decided not to respond -- they being the interviewee -- well then we would drop it at that stage of the game.

We were not telling our investigators what to do, other than go do what you are professionally trained to do.

Q Do you recall when RTC employees were given transcripts of their depositions to review for their own purposes?

A I would refer I believe to my notes -- to this chron, and I believe that started happening on the 18th of July.

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Q Were they requested to not share their transcripts with others?
A I believe that's true; yes.
In other words, they were supposed to look at those. We gave them a very short time frame, like one day, to get back to us with any comments they might have, or changes they might want to -- clarifications they might want to make.
Q Do you recall when the first copy of the first draft report was completed?
A The 21st or the 22nd.
Q Could you tell me to whom that draft report was given?
A To my knowledge, it went to Secretary Bentsen.
I need to point out here that, once again referring to my chronology, from the 21st to the 28th of July I was on annual leave in Texas.
Q Okay. That is helpful to know.
So you were not in Washington when the first draft report went to Secretary Bentsen?
A No, I was not.

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Q Do you have any knowledge of anyone else who received that report?
A No, I don't.
Not that I recall.
Q Was it your understanding that the Department of Treasury, not the IG's office but main Treasury, would receive a copy of the draft report on the 22nd or 23rd?
A I don't know that I really recall that. I want to say our aim was really to try to get it to the Office of Government Ethics at that early stage of the game, our reason being -- they were our user, if you would. So it was whatever we were at that stage of the game responding to their needs for what they were going to have to do with it.
Q Is it your understanding that a copy of the draft report went to the RTC, the main RTC?
A I don't recall that it did.
Q The White House?
A Definitely I don't recall that it went to the White House.
Q Did the RTC OIG provide copies of witness

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transcripts to RTC employees other than their own transcript?

A Not to my knowledge.

Q Are you aware that main Treasury or Treasury IG provided to counsel for each of the Treasury witnesses copies of all of the transcripts of depositions of witnesses other than those working at the RTC?

A (Pause.)

Would you say that again, please?

MS. FISHER: Would you re-read the question? I know it's a little bit long.

THE REPORTER: "Q Are you aware that main Treasury or Treasury IG provided to counsel for each of the Treasury witnesses copies of all of the transcripts of depositions of witnesses other than those working at the RTC?"

THE WITNESS: Really, I'm not sure -- if you're asking whether each interviewee was provided their transcript and asked to review it just like we did our RTC employees --

BY MS. FISHER: (Resuming)

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Q No. I will rephrase it.

Are you aware of any time that a main Treasury employee or their counsel was given or provided with a copy of all the deposition transcripts other than RTC employee deposition transcripts?

MR. KRAVITZ: I don't understand the question.

THE WITNESS: I think I understand the question. We learned about the 21st or the 22nd -- and once again, I was not here but I saw the E-mail traffic -- when there was some discussion of the report going to Bentsen, words to the effect that we did not have to provide the transcripts because they already had them.

Now directly on point to your question, I don't know that that necessarily excluded any RTC transcripts.

BY MS. FISHER: (Resuming)

Q Who did you learn this from?

MR. GIBSON: Steve, maybe you could clarify that answer a bit when you said "they"

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already had them. Is that a reference to Treasury IG, or --

THE WITNESS: That is Treasury's Office of General Counsel.

BY MS. FISHER: (Resuming)

Q Who did you learn this from?

A Directly? Probably from Patricia in E-mail.

Q When you got back from Texas?

A We were -- I carried a computer with me.

Q Oh.

A So you will find stuff dated the 26th and 27th. That was while I was in Texas.

Q Did you have any telephone conversations with her, or anybody from the OIG relating to this investigation during that time frame?

A While I was gone?

Q Yes.

A I don't recall.

Q While you were away, did you learn that copies of all the deposition transcripts, including those transcripts of RTC employees, were sent to the

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White House?

A Not definitely. I did, watching television on the first day of the hearing.

Q Will you explain --

A I didn't know which one --

Q -- that reference --

A -- which ones had gone, but Cutler is his statement said, or made reference to the transcripts. So I don't know whether they were all gone, or just one or two, but at that stage of the game is when I found out that somebody over there had them -- or I should say, "strongly suspected based on their statements."

Q Which particular statements?

A I don't recall exactly what it was.

Q Do you recall what day that was?

A Tuesday.

Q Did you take any action --

A I think it was the first --

Q -- at that point?

A No.

Q Did you call anyone, or E-mail anyone?

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A I don't believe so. I sent some E-mail the following day, but . . .
Q Were you surprised that transcripts had been released to the White House?
A Yes.
Q Why were you surprised?
A Our report wasn't finished.
Q Why else were you surprised, for any reason?
A Well I can't imagine why they would have gone to the White House if the report wasn't done.
Q Is it your understanding that the RTC OIG had taken a position that these transcripts should not be released to the White House prior to the report being done?
A Yes. We didn't want them released until we were done.
I will make one exception to that. That is, we were providing copies of all the transcripts to OGE as we were doing our work.
Q Was that view expressed to anyone from the Treasury IG at any time during the investigation?

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A Yes, it was.
Q Who was it expressed to?
A Well, I know we -- kind of revising earlier, we had the discussion at the July 5th meeting about whether there would be counsel present, or whether there could be White House counsel present, and of course in interviews and things like that, I believe the subject of transcripts was discussed there and I guess that would have been the first time, at least to my recollection.
But throughout we did not -- we were of the opinion that we were holding all that stuff closely until we were through with the work.
Q You expressed that to the people from Treasury IG?
A Yes, I believe we did.
Q Is it your understanding -- or what is your understanding of whether the RTC Office of Inspector General had any knowledge of the release of transcripts to the White House prior to the day that they were released?
A Do you mean prior to the 21st?

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Q What is it that occurred on the 21st?
A The 21st-22nd is when I subsequently learned. That's when there was some discussion held that said, words to the effect, well we can give them a draft report but we don't have to give them the transcripts because we've already provided them to Office of General Counsel of the Treasury.
So my question is, are you talking about before then?
Q Do you have any knowledge that the transcripts went to the White House prior to July 23rd?
A No, I do not.
But I don't believe that was the question you asked me.
Q No, it wasn't. The question I asked, and I will rephrase it, was whether RTC Office of Inspector General was informed that the transcripts were going to go to the White House on July 23rd?
A No.
Q Did you have discussions with anybody within the RTC OIG about the fact that RTC OIG was

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not informed of that?
A When I returned from Texas, yes.
Q Could you tell me the substance of those discussions?
A Basically, just that I think they learned about it the same time I did, substantively; in other words, watching the hearing, because they were there -- "they" being a number of people from our staff; I was not there, I was just simply told they were having meetings, and they had the hearing on television.
And about the time I guess that it came out publicly, they had, right about the same time, told them that, yeah, by the way, they had asked if they could do that, and then that's when I believe we learned about the July 23rd memo from Treasury to the White House to Jane Sherbourne transmitting the transcripts.
Q Who informed you of that memo?
A I don't recall.
It was somebody in our office.
MR. GIBSON: Again just to clarify, Steve,

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you weren't informed of that memo until the return from vacation? Is that right?

THE WITNESS: Right.

BY MS. FISHER: (Resuming)

Q Do you have any knowledge that they asked RTC OIG for permission to release the transcripts?

A None to my knowledge.

MR. O'CALLAGHAN: I'm sorry, Mr. Switzer, but did I hear you say earlier that when you got back you had a meeting the day the hearings were on that they had also been approached about releasing the transcripts the same day that they were released? I was a little confused about that, but maybe I am misstating it.

MR. GIBSON: No, I don't think that is what he said.

THE WITNESS: My understanding -- I got back on the 28th, I believe, or maybe the 29th. Representatives of our office -- well, it is referred to as the July 26th meeting, so that was who was there. And people from the Treasury IG's office were meeting in our conference room, and they had a TV on

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watching the hearings at the same time.

And I believe it was early in that meeting that they learned that the transcripts had been provided to the White House, and that that had occurred on the 23rd, which I believe was a Saturday.

BY MS. FISHER: (Resuming)

Q Do you know who from the Treasury IG's office was involved in the decision to release the transcripts to the White House?

A Only what I have read, and that that was the IG Inspector General Bob Cesca.

Q Is it your understanding that it was Mr. Cesca who informed the RTC OIG on July 26th that the transcripts had been released?

A I don't know who said what then.

Q Did you ever learn that any transcripts were sent to the White House prior to July 23rd, 1994?

A No, I did not.

Q Did you ever learn of the reason that these transcripts were sent over to the White House

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prior to -- well, on July 23rd, 1994?
A Not that I recall, other than that I know there is a memo or whatever from Treasury transmitting them to the White House. I don't recall precisely what it says.
Q Were you aware that the Senate Banking Committee had requested these transcripts and had been told that they could not be produced to Congress because the OGE investigation was not completed at that time?
A I was not aware at that time. I have since become aware of that.
Q Do you have any knowledge whether Ms. Kerner was involved in the decision to release the transcripts to the White House on July 23rd?
A No, I don't; not directly.
Q I would like to refer you to an E-mail --
(Witness and counsel confer.)
Is there something you would like to supplement?
A No, I was just asking him a question.
MR. GIBSON: If I could, we have been

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going for about an hour and 15 minutes --
MS. FISHER: Do you want a break?
MR. GIBSON: -- why don't we take about a five-minute break here, if we could.
(Recess.)
BY MS. FISHER: (Resuming)
Q Mr. Switzer, I would like to share with you a series of three E-mails that were produced to the Committee with Bates Nos. 6050 -- well, 6049 to 6051, and ask you to look at them and see if they refresh your recollection of what was being discussed with you and others at the RTC OIG at this time.
(Handing document to the witness.)
(Pause.)
A I recall seeing these. But I think it captures the essence of -- I was watching TV, I guess somewhat the same as Mr. Katsanos, and notice that they made reference to the transcripts.
Q And what was your feeling -- did you share the view of Mr. Katsanos that he expresses in this E-mail, that it seems like some individuals are getting briefed before any of the press inquiries started?

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A I wasn't focused on the press at all. I was concerned about your investigation. I mean, here a White House witness was talking about the transcripts, and I was simply surprised that they had them.

Q How did you feel about that, other than being surprised?

A Surprised.

Q Did you feel it was improper?

A Yeah, I -- I mean, that's why I was surprised; that I didn't think they should have them at that stage of the game, since we had not issued our report.

Q Was it your understanding that the transcripts contained information which the RTC considered confidential at that time?

A I don't know that I had focused on that at the moment, but I know that they contained reference to some things that were ultimately redacted out of them.

Q Do you have an understanding of why those things that were ultimately redacted out were

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ultimately redacted out?

A Yes, I do.

Q Could you explain that to me, please?

A Well, in some places -- I don't recall them specifically -- but, I mean they got at the substance of the investigations that RTC was conducting into the Whitewater issues, and RTC considered that information privileged and confidential, or whatever, and therefore wanted it redacted out.

Q The RTC considered it "nonpublic"? Is that correct?

A Right.

Q Is it your understanding that this was the same kind of information that was being transferred between the White House and the Treasury which was the subject of your initial investigation?

A I have no idea what they were transferring around. I mean, it was a question of these contacts and what the substance of that was.

Q Relating to the criminal referrals that were coming out of the RTC?

A Yes, it related to those.

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Q Referring you to 6050, the E-mail from Mr. Adair to Mr. Katsanos, with a cc to yourself?
A Um-hmmm.
Q It reads:
"My office gave the transcript of each interview only to the witness who gave that interview."
Was that Mr. Adair's understanding at that time?
A I believe so. I mean, you'd have to ask him, but that's what we did.
Q And referring to 6051, Mr. Adair's note:
"I told him we did not know in advance and that questions on this matter should be referred to Treasury" shows that he indeed did not know that the transcripts had been released to the White House prior to his previous E-mail.
Is that a correct interpretation?
A That would be my interpretation of it, yes.
Q Did you discuss this with Mr. Adair?
A When I returned, yes.

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Q Can you tell me about the substance of your discussions?
A Well I think it was simply a general discussion in the sense of we were sitting around -- "they," pardon me -- they were sitting around in this meeting and watching the hearings, and it turned up that, yeah, that the transcripts, not further defined as to whose, or which, or whatever, had been transmitted to the White House on the 23rd.
And then I saw a copy of the memorandum, or the letter from McHale to, like I said, it was Sherbourne or whoever at the White House transmitting them.
Q Was it your understanding that Mr. Adair had not seen that transmittal letter prior to writing these E-mails on the 26th?
A That is my understanding --
Q And had not been informed --
A -- that he had not.
Q -- that the Treasury General Counsel's office was going to transmit, or Mr. McHale of

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Treasury was going to transmit the transcripts?
A He was unaware of that, to my knowledge.
Q Did he have an opinion as to the appropriateness of this transfer?
A That he expressed to me?
Q That he expressed to you.
A Yes, that it was wrong; that it shouldn't have been done.
Q Did he express his reasons why it shouldn't have been done?
A It would be consistent I guess with what I thought at the same time: That we weren't through with the work, with our work, and it was inappropriate to send those over to the White House.
Q Had it been discussed prior to this time that some of the deposition transcripts contained confidential RTC information that was going to have to be redacted out before it was issued publicly, to your knowledge?
A Not that I recollect, specifically. It might have been talked about when I was gone.
Q Did you discuss this with Ms. Black?

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A Probably at the same time I discussed it with Mr. Adair when I returned.
Q Could you give me an impression of her opinion?
A She felt the same way as the rest of us did. If I recall, I think she sent an E-mail dated the 27th of July --
Q I can show you that E-mail. I have it right here, to refresh your recollection.
A -- that kind of mentions it.
Q The Bates Number is 25277, the best that I can read.
(Handing document to the witness.)
Is this the E-mail that you're referring to?
A Yes, I am.
Q Could you just read that second paragraph into the record for me, please?
A Sure.
"Anyway, we are now pushing to get a final report out Friday (OGE's target date). We learned in the meeting that Treasury OGC had released the

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transcripts of witness interviews to Cutler. This was evidently with the knowledge of the Treasury IG but nobody told us until after it was done. As you recall, when the question of giving the transcripts to the Treasury OGC arose, we objected, and they did it anyway and then told us about it later.

I guess the offices have very divergent philosophies about giving out info.

Cutler referenced Kulka's testimony in his appearance before the Committee, specifically citing the 'Treasury IG's Investigation'. We are not pleased."

Q Focusing on the sentence, "As you recall, when the question of giving transcripts to the Treasury OGC arose we objected". Do you have a recollection of that question arising?

A In what she is referencing here?

Q Um-hmmm.

A I believe she is speaking of when it arose in connection with giving a draft report to Bentsen, and I was not present. I subsequently learned this. And they made the comment to the effect that we don't

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have to attach the transcripts because we've already provided them to the Office of General Counsel. And I believe that was like the 21st or the 22nd of July.

Q Is it your understanding that the RTC OIG was not told about that until that time?

A That is my understanding, yes.

Q Do you have an opinion as to whether that was proper to send the transcripts to the Treasury OGC?

A I don't think they should have given them to them, either.

Q Particularly given that members of the Treasury OGC were subjects of the investigation?

A As well as their boss, Altman.

So I mean that would -- I mean, they should not have given them to them, either, at that stage of the game, just like they should not have been given to anybody.

(Handing document to the witness.)

Q I would like to show you another E-mail that you wrote on July 27th. It is Bates No. 6054.

A Um-hmmm.

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Q If you could just read that second paragraph and explain to me what you meant by that?

A "Otherwise, Pat and Jack have shared their E-mail traffic with me about Treasury [abbreviated] OGC sharing copies of transcripts with the White House. Does that action possibly violate the brand-new White House Rules about what they will and will not do in connection with investigations by regulatory [misspelled] or law enforcement agencies?"

Well, that makes reference to the earlier E-mails that I had seen.

I had read in the newspaper that the White House had come out with these brand-new rules about how they were going to deal with any investigations that were being conducted by regulatory investigative agencies.

I don't recall exactly what those said, but my reaction, as you can see what it is, is when I learned that the copies of the transcripts went to the White House, that it did not seem to be consistent with what I had read in the paper.

Q Do you have any other even general

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recollection about what the rules -- what was the substance of these rules that you had read about?

A That they were not going to involve themselves. They were going to steer completely clear of that type of thing so they would never have this perception, if you would, of this problem again.

MR. GIBSON: If I could, to make the record clear on this, that E-mail is dated July 27th, 1994. I believe that is after the July 26th meeting in which there was disclosure, certainly.

We became aware, and also certainly there was disclosure by Mr. Cutler during his testimony that the transcripts had gone over to the White House. I just want to make sure that that time reference is clear in here, because this statement here that, you know, the transcripts had gone to the White House I think in time it is very important to tie that down.

THE WITNESS: Okay. Yes.

BY MS. FISHER: (Resuming)

Q Did you have some discussions either with Mr. Blight, Mr. Adair, or Ms. Black about the

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substance that you wrote about in this E-mail, these new rules?
A Not that I recall.
I mean, I was on leave at this time, too. I was in Texas.
Q When you got back did you discuss it?
A I might have. I don't know.
Q But it was your feeling that the White House had involved themselves in the investigation?
A Yeah. Well, they had gotten copies of the transcripts prior to us finishing our -- finishing the investigation, since the report had not yet been issued.
Q In your years, many, many years working in the Office of Inspector General at first the Department of Agriculture, then for HUD, and then for the RTC -- I think I got all three of them there -- did you ever run across a situation where deposition transcripts of this type were released prior to the completion of the investigation, or any investigative material being released?
A The only time I could ever think of

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something like that occurring is if something was disclosed in a statement or something -- and I believe this is in one of my E-mails -- that is, that we feel that a person's supervisor would need to know in order to take some administrative type action, or needed to respond quickly prior to us completing the investigation, we might share that information with that supervisor. But otherwise, no.
Q Other than needing an immediate response.
A No. I mean, otherwise it waits until the investigation is complete.
MR. O'CALLAGHAN: Just a quick follow-up. So would disclosure of this type ever be considered proper in any investigation you've ever been involved in?
THE WITNESS: Not to my knowledge.
MR. KRAVITZ: He answered that question, but we really have had a rule for a year-and-a-half now of one lawyer per side asking questions. It has worked pretty well, and I think we ought to stick with that. Otherwise, these depositions will turn into eight hours instead of four hours.

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MS. FISHER: I think that might have been his first one.

BY MS. FISHER: (Resuming)

Q Did you have any discussions with members of the Treasury IG's office about the release of transcripts to the White House -- unredacted transcripts to the White House?

A No, I did not.

Q Do you have any knowledge of whether Mr. Adair had any conversations with anyone from the Treasury IG's office relating to the release of unredacted transcripts to the White House?

A None to my knowledge. Not in advance of the 23rd.

Q How about after the 23rd -- how about after the 26th when the RTC OIG was notified of the release?

A Well, I'm sure they discussed it at the meeting.

Q What meeting are you referring to?

A The --

Q The July 26th meeting --

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A -- when they were all together and they learned from the Treasury IG people, as well as saw it on television.

Q Were you told of any of the substance of those discussions at the meeting that were expressed to the Treasury IG's office?

A Only that Patricia was real pissed.

(Laughter.)

(Discussion off the record.)

BY MS. FISHER: (Resuming)

Q Can you expand on that last statement?

A Well, it's kind of like I think since she sort of captured it in plain terms there in the E-mail when she related that to me in the E-mail and said "we are not pleased." I mean, she was displeased that it was done because it -- since we were participating in the investigation, it didn't exactly cast us in a good light, either, for not following what we considered to be appropriate investigative procedures.

Q Did she have any discussions with Ms. Kerner about this?

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A "She," Pat? Patricia?
Q Yes.
A I'm certain that she did. I wasn't there, though.
Q Other than the July 26th meeting, were there any subsequent discussions that you are aware of, or that you were told about between either Mr. Adair, Mr. Blight, Ms. Black, and any member of the Treasury IG's office regarding the release of unredacted transcripts?
A (Pause.)
As I recall, and it's referenced on this chronology, and I was told this -- I was not present -- that when RTC's General Counsel referred to here as Kulka came over, she participated or was part of a meeting between some Treasury IG people and some people from our office, including Clark, Pat, and Mr. Adair that she referenced, and that she pretty much tore into Mr. Cesca and Ms. Kerner because of them releasing the unredacted transcripts.
Q Do you remember the substance of what she said?

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A No. I wasn't there. I was just told that she tore into them for releasing it, presumably because it was not redacted.
Q Because it contained confidential RTC information?
A Nonpublic information.
Q Do you know of any action that Ms. Kulka took at that time?
A I do not.
Q Do you know whether she expressed that she was planning on taking any action at that time?
A I was not told of anything.
Q Were you told of Ms. Kerner's or Mr. Cottos, or Mr. Cesca's response to Ms. Kulka?
A Not that I recall, no.
Q Do you have any understanding of what Ms. Kerner's relationship was with the White House at this time?
A I was unaware of whether she had any relationship whatsoever. I can only say, whatever she was doing at this time could only be an extension of the earlier meetings -- earlier being back to the

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very beginning of this thing when she was talking with Sherbourne and I believe Sheila Cheston at the White House in terms of arranging to get the White House documents and things like that.

Q Did you ever learn from anyone?

A Nothing more than that.

Q Did you participate in making the redactions to the transcripts?

A No, I did not.

Q Who did, to your understanding?

A Patricia from our office, and then some attorneys from RTC.

Q Do you know what standards, if any, were set forth in making the redactions?

A Not specifically, no. I mean, it would be privileged type information; not-public-type things that they don't want to disclose -- "they" being counsel's office.

Then, from a conversation with Patricia, there was simply a back and forth as to whether some things would or some things would not be disclosed.

Q Did you review the redactions?

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A Only after they were complete and I saw the issued-report.

Q Did you participate in drafting the report?

A Can you clarify?

First --

Q After you returned from Texas on July 27th?

A 28th.

Q Did you say the 28th?

Were you involved, or did you participate in any of the editing of the report, the draft report?

A Not that I recall of any significance. It was substantially complete.

Q Was this meeting that you described earlier with Ms. Kulka the only meeting that you recall Ms. Kulka being present during the investigation?

A Yes.

Q Are you aware of any subsequent conversations between Ms. Kulka and Ms. Adair

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relating --
A No, I'm not.
Q -- to this issue?
How about Ms. Kulka and anybody from the RTC OIG's office?
A She and Patricia may have conversed about possible redactions. I know Patricia has said that there was some disagreement on some items to be redacted.
Q Do you recall whether Ms. Kulka -- whether you were told that Ms. Kulka at some point expressed the opinion that copies of the transcripts should not be attached to the report?
A I have no recollection of that.
Q Are you aware of anything that was not expressed in the report that was uncovered during the investigation that would be material to the report?
A Not to my knowledge.
Q Do you have any knowledge of who suggested changes to the report in the final editing phases?
A I have been told that Treasury OGC commented on the draft report.

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Q Prior to the report being issued?
A I believe that is true.
Q Who told you that?
A (Pause.)
Q Do you recall?
A I do not recall.
Q Do you know who from Treasury OGC commented on that?
A No, I do not.
Q Do you know what --
A I mean, it is not inconceivable it would be Francine.
Q Why do you say that?
A Well, she's in Treasury Office of General Counsel. But that is not the context in which I heard it.
Q What is the -- do you have any more specific --
A Well, other than her was the way my understanding of it when I heard. In other words, people in the Office of General Counsel at Treasury had commented on the draft.

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Q Did you have an opinion as to whether that was proper for members of the Treasury Office of General Counsel to comment on the draft report, given that some of the members --

A I don't believe that it was proper. I mean, we don't give draft reports generally to people to comment on, not investigative reports.

I want to say -- and once again, I wasn't here so -- it's the day after I left, but I don't know that I was necessarily aware that they were providing a copy of the draft report to Secretary Bentsen. I thought the draft report was going to go to OGE.

Q Do you have knowledge whether others within the Office of the RTC OIG had prior knowledge that the draft report was going to go to someone other than OGE?

A I do not know. I do not recall.

Q But you, yourself, did not have that knowledge?

A No.

Q Prior to it being sent over to Secretary Bentsen?

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A My last day at work was the 20th, and there was not a, so to speak, final draft at that stage of the game.

Q It was not discussed in your presence?

A Right.

Q Do you have an opinion as to whether it was proper to send the draft of the report to Secretary Bentsen?

A I don't see why they needed to. I mean, basically we were operating on a theory that we were going to provide our report to the Office of Government Ethics who was then going to render a decision as to whether there had been ethical violations associated with this.

Q Did you consider it improper?

MR. KRAVITZ: Can you say what you mean by "improper"? I mean, do you mean --

BY MS. FISHER: (Resuming)

Q Do you have an understanding of "improper" --

MR. KRAVITZ: Let me finish my objection. I think it is important, since the word "improper"

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often connotes an ethics violation, and I don't know whether that is what you mean by the question, or whether just some more common usage of the term improper, but I think it is important that the record not be unclear.

I mean, if your question really is more: Is this inconsistent with what you would have done, or with what your office's general practices are? That is one thing that might lead you to think this thing was improper.

Or, if the question is: Do you think that this itself violated some ethics rule? That could be another meaning for the term "improper." I just think we should all be clear as to what we are saying since that is a term that can have far-reaching meaning.

BY MS. FISHER: (Resuming)

Q Why don't you answer it both ways.

A Well, I do not know whether it would be any sort of an ethical breach for the Secretary to see the draft report.

It would not be consistent with normal

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procedures that we would follow to give him a draft report. Particularly if I recall right, he had not been interviewed at the time.

Q So you found it to be inappropriate?

A I found it to be questionable. I want to introduce a new word.

Q Did others in your office find it to be questionable?

A I wasn't here, so I don't know what their reaction was.

Q Did they ever express their reaction to you?

A Probably, but I think it is lost in their -- I considered it questionable, and I don't recall anybody disagreeing with me.

MR. GIBSON: To clarify again, Steve, you are saying "questionable" predominantly in regard to our procedures --

THE WITNESS: Yes.

MR. GIBSON: -- and policies and the way we conduct investigations?

THE WITNESS: Right.

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BY MS. FISHER: (Resuming)
Q Do you know whether anyone at the main RTC suggested changes to the draft report prior to the report being finalized?
A The only I would be aware of would be the issue of redactions -- that, and of course people who were interviewed were provided their transcripts and the opportunity to comment. So those RTC employees that commented and made changes to their redactions, then that had an impact, too.
MR. GIBSON: Can I ask a clarifying question here?
MS. FISHER: Yes.
MR. GIBSON: Steve, were you aware of whether main RTC ever received a copy of the draft report prior to its being finalized?
THE WITNESS: No, I am not.
MS. FISHER: Thank you.
BY MS. FISHER: (Resuming)
Q Do you know who made the decision to give the draft of the report to Secretary Bentsen?
A No, I do not.

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Q Do you have any knowledge whether -- were you, or do you have any knowledge of anyone else being consulted at the RTC before it was sent over?
A The draft report?
Q Yes.
A No.
Q Were you or anyone else at the RTC OIG consulted prior to the time that OGC at Treasury made suggestions or suggested changes to the report, that they do so?
A I was not.
Q You didn't request that they do that?
A No, I did not.
Q No one from your office requested that?
A Not to my knowledge.
Q Are you aware that after the report was issued on August 2nd, 1994, the RTC OIG received a request from Congress for copies of the unredacted transcripts?
A Yes, I recall that.
Q Do you recall what the response was from the RTC OIG or from the RTC?

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A I think it was -- no, I don't recall what our specific response was. Our normal practice would be to provide them.
Q Of the unredacted?
A Right.
Q I would like to present you with a copy of a letter, Bates No. 6268 and 6269 and ask if you are familiar with that letter. It is dated August 3rd, 1994, from Lloyd Cutler to Chairman Riegle, former Chairman Riegle.
(Handing document to the witness.)
Are you familiar with this document?
A I've seen this letter, yes.
Q Who provided you with a copy of this letter? Do you recall?
A I do not recall that.
Q Do you recall when you saw this letter for the first time?
A No, I don't.
Q On the second --
A I'm not sure. This might be a letter that we saw in a draft stage that we took some exception

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to because of the language in it, but I don't recall specifically that this is the one.
Q Would that be Mrs. Black that was involved in that?
A Right.
Q And that was the subject of some E-mail traffic, as well?
A Right.
Q That I have. I will show you a copy and maybe that will refresh your recollection.
(Handing document to the witness.)
I believe that this was the . . .
A This is what I recall.
Q And those E-mails were Bates Nos. 609 and 6289 -- 6090 and 6289, maybe.
Can you tell me what you recall about the discussions surrounding them?
A Well, only that we read the draft -- and by "we," I would refer to Patricia and myself -- and maybe others in a way that certain of the language was stated in there. It looked as though there were some sort of a tit for tat in terms of how we were getting

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our interviews done at the White House.
That is just -- I have not read these again, right at the moment.
Q Well, I will let you go on and review them.
MS. FISHER: Why don't we go off the record while he reviews them.
(Discussion off the record.)
THE WITNESS: Okay.
MS. FISHER: Back on the record.
BY MS. FISHER: (Resuming)
Q Can you explain to me your understanding of what exactly happened with this draft letter that was sent?
A As I recall, the letter -- the draft was sent to Francine. There was a telephone conversation between -- and I am just reading this, too -- between Francine and Patricia about the substance of the letter and what the meaning was, the meaning in terms of whether we agreed to provide them transcripts or not, with Patricia saying no, that we did not agree to such a thing, as far back as the very earliest

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meetings that we participated in, and primarily her with the people at the White House.
We said that the way it was worded it sounded like we'll make the people available for interview if you'll give us the transcripts and some sort of a fashion like we were negotiating that, and which we did not consider to be an issue subject to negotiation.
Q And that indeed was not the case; correct?
A Right. That was not the case.
Q Looking at the third paragraph, the second-to-the-last sentence, it says: "I had agreed that there was a potential problem, but that it would be worse for us to violate our normal procedure and turn over the transcripts before the report was finished. Kerner thought there might be room for further discussion, but I did not."
Do you recall discussing this issue with Ms. Black at any time?
A The substance of that I captured, I believe, in a note that I made following her, Patricia's, meeting at Treasury with the White House

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counsel back on July the 5th.
Q The one we talked about earlier?
A Right. Where the drift of the discussion was, well, gosh we've got to do an investigation over here, and if we go interview the witnesses -- this is what I wrote down -- if we go interview the witnesses, then it is going to look like we are tinkering with the investigation; if we get the transcripts from you, it looks like we are tinkering with the investigation.
The upshot of the whole thing was that they had a problem, but we were not going to participate in the solution.
Q And you and the Office of Inspector General RTC maintain that --
A We weren't giving them the transcripts.
Q -- opinion and view, and expressed that to them?
A Throughout the --
Q Throughout the investigation?
A -- investigation, whenever we had the opportunity.

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Q Do you have any knowledge that Mr. Cutler's statements and the August 3rd letter which you looked at before about the use which he made with the transcripts that were provided to him is inaccurate?
A I have no way of knowing.
Q Did you ever learn any information that would lead you to believe it was inaccurate and used for other purposes?
A The only thing that struck me was that, in a letter communicating them to the White House, McHale claimed that they weren't supposed to be disclosed in any way public, or something like that. So I found it kind of interesting that he mentioned them in his testimony.
But other than that . . .
Q Would that be this letter that you are referring to?
(Handing document to the witness.)
Bates No. 6877 dated July 23rd from Steve McHale to Jane Sherbourne?
A This is the letter I'm referring to, yes.

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Q And would you explain to me again what you feel is inconsistent?
A This was just something that struck me as odd. He says here, you have agreed that the transcripts -- no, I guess I should back up and clarify. This is addressed to Jane Sherbourne, not to Lloyd Cutler.
Q Right.
A So, "You have agreed that the transcripts we are providing you with this letter will not be disclosed publicly or shown to individuals other than Mr. Cutler who may be called as witnesses by the Committee until such time as we advise you that this restriction is no longer necessary."
So they're not going to disclose them publicly, but then he makes reference to them in his testimony, and I just thought that was odd. I don't know if that is a violation of anything or not.
Q Did the Office of Inspector General of the RTC ever consider investigating whether the release of these transcripts was a violation of any ethical rules, or any other guidelines?

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A No, because it did not involve the RTC. It was a release by Treasury.
Q Are you aware that Mr. Cutler has made statements in May of 1995 that have been reported to the press, which the press has attributed to him, that the deposition transcripts that were provided to the White House were used to identify discrepancies in the recollection of presidential aides before the Congressional hearings?
A I don't recall reading that.
Q Are you aware that the press reported Mr. Cutler saying, if we found inconsistencies we would go back to the White House officials and go back over testimony they gave us, and then we would say we have heard other reports?
A Not specifically.
Q Assuming those statements that have been attributed by the press to Mr. Cutler were said by Mr. Cutler, would you find that to be an improper use of the deposition transcripts that were released from the Department of the Treasury to the White House?

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A That's speculation, but yes, it would be.
MR. GIBSON: If I can clarify that also, Steve, when you say "improper" do you mean that it is something that would be in violation of this agreement with the Department of the Treasury?
Or are you raising an ethical issue?
THE WITNESS: Not an ethical issue, just something contrary to what they said they would use them for.
BY MS. FISHER: (Resuming)
Q And contrary to what you believe would be the standard procedures --
A The standard procedures --
Q -- for an ongoing investigation?
A Under standard procedures they would not have gotten them.
Q For just this reason, for example?
A That would a good example.
Q Would this be one of the reasons that they should not get them?
A That would be a good example.

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MS. FISHER: If we can take like a five-minute break, I think I just have a couple more questions. That's okay.
MR. KRAVITZ: We can go off the record.
(Recess.)
BY MS. FISHER:
Q Mr. Switzer, did you have any involvement in the decision to place Ms. Lewis, Ms. Jean Lewis, Lee Ausen, or Richard Iorio on administrative leave?
A None whatsoever.
Q Did you have any involvement in investigating that decision to place those three individuals on administrative leave?
(Pause.)
A Only that I knew that it was going on, after it was done.
Q Can you explain just a little bit?
A Let's go back to the question again.
THE WITNESS: Could you repeat the question again?
(Readback.)
THE WITNESS: All right to the extent that

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we received a request to do such an investigation, and we communicated with the independent counsel who asked us to delay doing such an investigation, and that delay still stands to this day.

BY MS. FISHER:

Q Do you have any more substantive information regarding the request to do such an investigation? Who requested it, for example?

A Hearsay only. The deputy general counsel at RTC, I guess -- give me the name -- Andrew Tomback called and offered us the opportunity to search these people's offices if we wanted to before they came back to work, if we thought that would be helpful in connection with our investigation.

The person to ask about that is Jack Adair, because Tomback called him.

Q Search for what purpose, search their offices for what purposes?

A That's pretty much the same question we asked.

Q What was Mr. Tomback's response?

A He was the one that did the requesting.

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Mr. Adair's response was we could not imagine any reason why we'd want to search their offices.

Q Did Mr. Tomback express a reason why he thought that that would be appropriate?

A Simply that these people had been gone for a couple of weeks, and that there might be something in there that we thought would be useful to us in our investigation, and we didn't agree with that point.

Q Why didn't you agree with that point?

A We don't go around searching people's offices.

Q Because it's?

A We view that as inappropriate. I mean, that's not how we conduct our investigations.

Q So you refused that request?

A Yes, we did.

Q Do you have any information as to anyone else that may have searched the offices?

A None whatsoever.

Q Do you know whether Mr. Tomback was calling on someone else's behalf?

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A I do not know that.
Q Did you have any other substantive involvement prior to the investigation being deferred at the request of the Office of Independent Counsel?
A Not that I recall, no.
MS. FISHER: I've no further questions, thank you.
THE WITNESS: Okay.
EXAMINATION
BY MR. KRAVITZ:
Q Mr. Switzer, I'm going to be as brief as I can and hopefully I will not be repetitive.
Sometimes I may have to be a little bit repetitive, just to focus your attention on certain areas that you've already gone into.
A Okay, that's fine.
Q You've testified previously about your belief that certain officials in your office may or may not have told White House officials that your office did not want transcripts released to the White House before the final report was released to the public.

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Did you personally at any time tell any White House official that deposition transcripts should not be released to the White House before the report was completed?
A If I heard the question, did I personally tell anybody in the White House?
Q Any White House official?
A That we would not release the transcripts to them prior to completion of the investigation.
Q Or that you thought transcripts should not be released to them before the completion of the investigation?
A No, I did not. I did not have any communications with the White House people.
Q In your presence, did any RTC IG official tell any White House official that deposition transcripts would not or should not be released to the White House before the completion of the investigation?
A Once again, I did not have any communications with White House personnel on the issue of transcripts.

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Q Okay. My question was, in your presence, did any other official from the office of Inspector General at the RTC tell any White House official that deposition transcripts would not or should not be released to the White House before the completion of the investigation?

A No, they did not.

Q So you would agree that any information that you have that any such statements were made by anyone in your office to the White House is based on hearsay, what other people have told you?

A What was related to me, yes.

Q Let me just go back to the very beginning, if I might, and I apologize if I'm exposing my own ignorance about this whole thing.

But I want to see if you can maybe help us understand exactly how your office came to be involved in this entire investigation, and what the relationship of your office was with the other offices and entities that were involved.

Am I correct that this whole process began when Secretary Bentsen asked the Office of Government

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Ethics to conduct an investigation and provide an analysis of the ethical propriety of the White House-Treasury contacts?

A I believe that's correct, yes.

Q And it was after that happened that the OGE contacted the IG's office at the Treasury and the IG's office at the RTC to assist in the OGE's own investigation and analysis of the White House-Treasury contacts, is that right?

A Yes, I believe that's correct.

Q And the reason why the OGE reached out to the two IG offices was that the OGE has no investigative resources itself?

A That's correct.

Q Now, was it your understanding then that the Office of Inspector General at the RTC was working for the Office of Government Ethics in this investigation?

A Sort of. I mean, technically we don't work for anybody; we're independent.

Q Right.

A But we were providing them assistance.

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That was our user.
Q You had been asked to investigate certain facts and your task was to find those facts and then report on them to the Office of Government Ethics, is that accurate?
A That's how we viewed it, yes.
Q And to your understanding, that was the same role that the Office of Inspector General at the Department of Treasury had?
A Yes, I would have to say yes. On more than one occasion they, I believe I mentioned this before, felt compelled by the Secretary, the Secretary's request in having a report completed prior to those hearings.
So it was maybe not as clear for them as it was for us.
Q Am I correct that in the great majority of the cases that the IG Office at the RTC becomes involved in, that the great majority of those cases involve internal RTC matters?
A Generally speaking, that is true, yes.
Q And in the great majority of your cases,

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do you work, does the RTC IG's office work by itself, as opposed to along with other investigative agencies?
A Yes and no. If we're into a criminal issue, we'll be working with the FBI. They may be leading an investigation, and we would assist. On the other hand, they may have said, fine, you guys investigate away and let us know how you're doing.
Q Had you ever, had your office ever before conducted an investigation for the Office of Government Ethics?
A Not in the same circumstance as this.
I mean, we have conducted investigations, the results of which we have discussed, you know, at the conclusion discussed with the Office of Government Ethics in order to get some sort of an opinion or a position from them as to whether there were ethical violations.
Q Had you, before July 1994, had the Office of Inspector General at the RTC ever conducted a factual investigation at the request of the Office of Government Ethics?

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A No, not that I recall.
Q So you never before have been in the position of conducting a factual investigation for the specific purpose of reporting facts to the OGE for their analysis?
A I would have to say no, to my recollection.
Q So this was not the typical investigation that your office is involved in, was it?
A Would you define typical?
Q I think you've already testified that this was the first time, at least to your knowledge, that your office had conducted a factual investigation at the request of Government Ethics, is that right?
A Right.
Q And this was not an investigation that was limited to internal RTC matters, correct?
A That's true, it was beyond, except that the subject of the so-called contacts they'd have to get into business at the RTC, and that being the investigative referrals.
Q Right. But what you were investigating

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was the White House-Treasury contacts relating to the RTC's underlying investigation?
A Right, right.
Q What you were investigating was not an internal RTC matter, was it?
A Somewhat. I mean, part of the reason we were there is because there were RTC employees to be interviewed in connection with the case, and therefore our presence was needed to interview those people. We would have the jurisdiction over those folks where the Treasury would not.
Q You're not testifying that an investigation of White House-Treasury contacts is an internal RTC matter are you?
A No.
Q And so in that regard, as well as in the regard that you were working on something really for the OGE, wouldn't you agree that this was not a typical Inspector General investigation?
(Pause.)
A The customer, the user was not a typical user of our investigation, okay. I mean, our

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investigations are conducted, we go out and interview people and we review documents, which is exactly what we did here. The only thing that's somewhat atypical is that all of our statements were taken, were recorded, just like this is, where usually that's not done.

Q Well, except when you're working with the FBI, for example, aren't you the lead agency on an investigation?

A In some cases we are the lead, when we're working with the FBI. In most instances, if the FBI is active, they are leading, and we are assisting.

Q What percentage of your cases are the FBI involved in?

A Not a lot. I'd hesitate to put a number on it. I mean, they are involved in a lot, but we're not working with them in a lot of cases where they are in fact leading. Most of the time, we are left to do our own investigative work, and just keep them informed of what we're doing.

Q What percentage of your cases approximately does the RTC's Inspector General's

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Office work on by itself?

A More than half.

Q Is it more than 75 percent?

A I'd hesitate to get that far. I mean, it's a lot.

Q And what percentage of your cases approximately is your office the lead agency on?

A That would pretty much correspond, more than half of them. I mean, a lot of those cases we're doing on our own. There's not a lot of them that we're just outright assisting the FBI and that's all we're doing.

Q So it is not your usual position to be assisting someone else in an investigation, right?

A That's an accurate statement.

Q Has there ever been another investigation in which your office was assisting the Treasury Department's Inspector General's Office?

A Not that I recall.

Q This is the first time that you're aware of that that has happened?

A Yes.

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Q In that regard, would you agree that this was not a typical investigation for your office?
A I'll kind of go back. The investigation itself was typical. The difference was who our audience was, if you would.
Q Okay. So when you say the investigation was typical, what you mean is that your approach to finding facts was the way you --
A Conducting an investigation, yes. Pardon me. Conducting an investigation is conducting an investigation.
Q Okay. Just so we can summarize. The way you conducted this investigation was the same way that you conduct most if not all of your investigations?
A Correct.
Q But the context in which you conducted the investigation, and the entities or persons to whom the information was ultimately provided was different than in the typical Inspector General RTC investigation?
A That's good. That's correct.

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Q Now you've testified on several occasions earlier in this deposition in response to questions from majority counsel that in your opinion, certain things that people said or did, or at least that people have been reported to have said or done, were improper.
Were any of those opinions that you stated earlier in your testimony meant to indicate your view that something that someone had said or done was unethical or in violation of government ethics rules?
A I did not focus in that fashion. Generally speaking, I was referring to inappropriate in connection with how a normal investigation is handled, or how we would like an investigation to be handled.
Q By your office?
A By our office.
Q Are you an expert in the rules of government ethics?
A I'm the agency ethics official for the Office of Inspector General.
Q Okay. So you know a lot about ethics.

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A RTC ethics, I do, yes, sir.
Q But what you meant when you said that things were inappropriate or improper were that they were different from the way your office ordinarily conducts investigations?
A Yes. What we would view as how investigations are normally conducted. I mean, there's a set of government-wide standards published on what's best practices on how to conduct investigations.
Q Does the RTC Inspector General's Office itself have written regulations standards for the conduct of factual investigations?
A Yes, we do. We have what we call a manual series. It's a number of different chapters on investigative procedures, how to conduct interviews, things like that.
Q Do you know whether the RTC IG manual addresses the subject of the release of deposition transcripts?
A Not that I recall. I just don't know.
Q You don't know.

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Can we go off the record for one moment?
(Discussion off the record.)
MR. KRAVITZ: Let's go back on the record.
While we were off the record, I made a request of Mr. Gibson for production of a copy of the RTC IG's investigation manual.
Mr. Gibson indicated that he would provide that to the Special Committee, and that he intends to request that the manual be treated as either confidential or highly confidential by the Special Committee.
Whatever you request, we'll certainly take into serious consideration. I think that ultimately the Chairman and Ranking Member have the final say as to what gets marked "highly confidential," but I'm sure they'll make an appropriate decision.
MR. GIBSON: That's fine. Thank you.
BY MR. KRAVITZ:
Q Mr. Switzer, is it fair to say that if this manual does not address the subject of whether deposition transcripts can be provided to anyone before the completion of an investigation, that the

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standard practice that you've been referring to is simply a matter of tradition or how it's usually done, as opposed to some formal rule of investigative procedure at the RTC IG's office?

A I guess standard practice would be the term, but I mean, it's -- one of our chapters has to deal with firearms and there's not a section in there that says you don't point loaded gun at somebody.

So, I mean, there's some things that we just kind of take for granted.

Q Is this one of those things that you just kind of take for granted?

A Yes. I mean, we're not sharing information prior to investigation, during the course of the investigation, this is the normal practice, with the once exception that I mentioned earlier.

Q Which was that in the event that administrative action needs to be taken quickly?

A That something came up during the course of an interview that we felt that was so sensitive or so important that we had to share it with the person's supervisor or something like that, well,

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then we would either share or discuss in detail the substance of that interview with that supervisor.

Q Now Mr. Blight testified that another exception to this standard practice of not releasing investigative material during the investigation was if those materials were important to another on-going investigation. And that sometimes in those circumstances, investigative materials would be released by your office before your office completed its investigation.

Do you agree with that?

A Yes, I would.

Q And can you give an example of how that second exception might work?

A I'm trying to think.

We shared information during the course of our investigation with the Independent Counsel. If we're doing something with the FBI, we would share it with them as another investigative agency. When it's another investigative agency, it's not the same thing. It's not like sharing it with a potential target of your investigation.

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MR. GIBSON: If I could ask a question to just kind of clarify that response?

You know, I mean, sharing in other words with another law enforcement agency is one thing. Sharing it with somebody else is another?

THE WITNESS: Right.

BY MS. FISHER:

Q You've testified, I believe, that the transcripts, the unredacted transcripts were provided to the White House to Mr. Cutler specifically on July 23, 1994. Is that correct?

A Yes. And I think I subsequently pointed out that the letter was addressed to Jane Sherbourne.

Q And this is just based on information that's been provided to you as to when these transcripts were given to the White House, isn't that right?

A That is true.

Q Tell us, if you would, exactly what it is about those transcripts unredacted going over to the White House approximately a week before your office concluded its investigation that you find to be

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troubling?

A Well, the report itself wasn't issued. It creates an appearance that we are somehow or other cooperating with the White House in connection with our investigation, which, in my terms, would seem to taint our office both personally and professionally.

Q Why is that?

A Well, I mean, investigators don't do that, I guess, is the term that I would use. We're not through with the investigation. If I'm not mistaken, all of the interviews had not been completed at the time. It allowed that information to be shared, if they so chose to do so.

Q Anything else?

A Not that comes to mind immediately, no.

Q Let me back up for a minute because references have been made throughout the deposition to sharing information with targets of the investigation.

Now my understanding, and tell me if you agree with me, my understanding is that the Office of Government Ethics was asked by Secretary Bentsen to

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analyze the question whether or not any Treasury Department officials had violated ethics rules with regard to the White House-Treasury contacts.

Is that your understanding?

A I believe that's correct.

Q And the corollary to that is that the OGE was not asked by Secretary Bentsen to analyze the propriety of White House officials' actions with regard to those Treasury-White House contacts.

Is that your understanding as well?

A I guess I'd have to say yes to that.

Q So you'd agree with me that White House officials were not among the subjects of OGE's, and therefore your office's investigation?

A I guess that's so. I mean, I have a problem, if you would, or I would have a problem saying that some contact by Treasury with the White House was inappropriate or improper ethically, but that there was nothing wrong on the other side.

Q So you have some problem distinguishing, setting this off into two separate investigations. Is that really what you're saying?

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A No. I have a problem in a sense saying that you can't have unethical behavior by a Treasury employee for contacting a White House person, and the White House person being without an ethical problem also. I don't know another way to say that.

Q Is it still your answer, nevertheless, that the White House officials were not subject to the investigation?

A Right. Nobody in the White House was a target or a subject of our investigation.

Q Certainly Lloyd Cutler was not a target or a subject of the investigation your office was conducting, correct?

A No, he was not.

Q Now, you mentioned earlier that not all of the interviews were completed as of the time that the transcripts were sent over to the White House on July 23, 1994.

To your knowledge, how many depositions were conducted during the entire course of this investigation by your office and the Treasury IG's office?

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A A specific number I don't recall. I believe it was like 27.
Q Approximately 27?
A About 27.
Q How many were yet to be conducted as of July 23, 1994?
A I believe it was two. Ludwig, the Office of the Comptroller of the Currency, and Secretary Bentsen.
Q Did either of those two witnesses work at the White House as of July 23, 1994?
A Secretary Bentsen, he's appointed by the President.
Q Worked at the Department of the Treasury.
A Worked at the Department of the Treasury.
Q And the Office of the Comptroller of the Currency, that is a part of the Treasury Department?
A Treasury also.
Q Not part of the White House?
A No, it's not part of the White House.
Q Do you have -- strike that.
So it's fair to say then that all of the

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White House witnesses to be interviewed or deposed as part of your investigation had already been interviewed or deposed as of the time that the transcripts went over to the White House on July 23rd?
A I believe that is true, yes.
Q So no one, no White House official had any opportunity to change his or her testimony provided to your office as a result of having reviewed other people's transcripts, right?
MR. GIBSON: If I could just clarify, in relation to their investigation.
MR. KRAVITZ: In relation, right. Well, let me rephrase the question.
BY MR. KRAVITZ:
Q Would you agree that no White House official had any opportunity to change the testimony that he gave at a deposition to your office or the Treasury IG's office as part of this investigation, as a result of having reviewed any other White House official's, or anybody else's deposition transcript?
A I believe that's true.

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Q They were already under oath on the record before these transcripts went over to the White House, right?

A For the purposes of our investigation, that's true.

MR. GIBSON: If I could just clarify for the record here for a moment, we've been asked to provide a letter informing the Committee whether there were any depositions of any White House personnel that were taken after 7/23/94 and we will do so.

MR. KRAVITZ: Thank you.

BY MR. KRAVITZ:

Q Have the unredacted transcripts of all of the depositions taken as part of your investigation been provided to the Congress?

A I believe the answer to that is yes.

Q And all of the unredacted transcripts of your depositions have also been provided to the Office of Independent Counsel, correct?

A Yes, that is true.

Q And would you agree then that if anyone,

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at any time since July 23rd, 1994, has changed his or her testimony as a result of transcripts having gone over to the White House, that that's going to be available for all of us to review?

A I guess I would, yes.

MR. GIBSON: Go off the record for a moment.

(Discussion off the record.)

THE WITNESS: I do not have any idea what the Independent Counsel is doing with this stuff so somebody may question something.

BY MR. KRAVITZ:

Q Now, the IG offices provided a report to the OGE on July 29, 1994, is that correct?

A That was the final report, yes.

Q And that was the factual report based on review of documents and on sworn depositions that were taken by both IG offices, correct?

A Yes, it was.

Q Was that report influenced or affected in any way by any White House official who had reviewed transcripts that were sent over to the White House on

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July 23rd, 1994?
A Not to my knowledge.
Q So to your knowledge, the transmission of transcripts on July 23rd, 1994, to the White House had no effect on the content of their final report issued by your office and the Treasury IG's office on July 29, 1994, is that right?
A I'm aware of no specific circumstances that might have impacted it.
Q If these transcripts had not been sent over to the White House on July 23, 1994, when in the regular course would White House officials have had access to these transcripts?
A Subsequent to the completion of the report. And Secretary Bentsen made his public statement on July 30th, which therefore made it sort of FOIA'able. In the normal course of business, other than him being interviewed, there was really, going back to where we started out, and it really didn't involve the White House. It involved improper contacts by Treasury, so I don't know why the White House would have needed it at all.

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Q Were the transcripts, the deposition transcripts were provided to the Senate at some point in late July, is that right?
A They were provided. I don't know whether it was late July or early August.
MS. FISHER: Are you talking about unredacted transcripts?
MR. KRAVITZ: We got the redacted transcripts.
MS. FISHER: Right. So redacted transcripts were provided.
THE WITNESS: I was not drawing a distinction. I know we provided it. I don't recall which it was. I know there was a subsequent flap, if you will, over that.
BY MR. KRAVITZ:
Q All right. We know the redacted transcripts were sent to the Senate in late July, early August.
Were the transcripts otherwise available to anyone other than specific witnesses who had access to their own transcripts?

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What if just someone, just some member of the public wanted to look at these things?

A They would not have been, unredacted transcripts would not have been available to the public.

Q Would redacted transcripts have been available to the public?

A I believe so, but I'm not completely clear as to whether there may have needed to be additional redactings prior to them being released publicly. Personal privacy type stuff.

Q If you had been contacted on July 30, 1994, when the report was complete, the investigation was complete, if you had been contacted by Mr. Cutler on that day, and asked for copies of the deposition transcripts, what would your proper response have been?

A I would have referred him to the Treasury Inspector General.

Q Why is that?

A They're the ones that published the report.

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Q And what do you think the proper response would have been by the Treasury Inspector General to such a request on that day?

A I don't know.

MR. GIBSON: Let me just ask a question.

Are you familiar with the Treasury Department's rules and regulations on release of information?

THE WITNESS: No, I'm not. But my thought being it would go back to something I said awhile ago, and that was this investigation was performed to determine -- this is what you said -- the ethicalness or lack of ethicalness of conduct by Treasury employees in contacting White House people.

So, in my mind, I would have questioned why does Mr. Cutler need it, issued or otherwise.

BY MR. KRAVITZ:

Q Were you aware that Mr. Cutler was conducting an investigation of his own into the propriety of White House officials' conduct in relation to the Treasury-White House contacts?

A Vaguely, yes.

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Q Were you aware that Mr. Cutler had been asked to report to Congress as to the findings of his internal investigation?

A I do not recall that.

Q And so in reaching your opinions as to the propriety of transcripts being released to Mr. Cutler, you've not taken into account Mr. Cutler's own on-going investigation and his obligation to report to Congress.

Is that right?

A Well, kind of yes and no.

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EVENING SESSION

(6:00 p.m.)

BY MR. KRAVITZ:

Q How could you have taken it into account if you didn't know about it?

A Well, that part is the part that I believe I was answering no to.

Yes, we recognized early in the process that he was conducting some type of an investigation there in the White House, and that's why they wanted, from the very beginning, to obtain the transcripts which of course we said no to early on.

And it's referenced in either my personal notes or in the E-mail that they had a problem because the only way that they could get the information from our interviews was to interview the people themselves or to get the transcripts from us.

And if they interviewed the people themselves, the appearance of the problem was that they were trying to influence witnesses in our investigation.

And if they got the transcripts from us,

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well then it would certainly look like they were trying to influence our investigation.

And so it was acknowledged right at the very beginning that they had a problem, that our position was that if they wanted the information from these very same people that we were getting, they were going to have to interview them.

And that was established in the July 5th time frame.

Q And who are the people that you were referring to that they would need to interview themselves? You mean the Treasury and RTC officials?

A Precisely. And their own White House people. I mean, that was kind of I think spelled out very early in the process that we couldn't share this stuff with them because of the nature of what we were doing.

Q But you all recognized that the White House was in a difficult position?

A Absolutely, we recognized that.

Q In terms of getting access to information that they needed without appearing to be intimidating

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witnesses?

A Exactly, yes. We were aware of that.

Q Now, I want to talk to you a little bit about the redacting process that apparently occurred some time late in July 1994.

You've testified that you were not involved in the actual redaction process itself. Is that right?

A That's correct. I testified I wasn't even in town.

Q Okay. And so you were not involved in setting standards for what type of information would be redacted from those transcripts?

A No, I was not.

Q But you've testified that you've reviewed the transcripts or some of the transcripts after they were redacted. Is that right?

A Yes, I've looked at some of them, yes.

Q And do you have a general, can you generally describe for us what type of information was redacted from the deposition transcripts?

A The one that specifically comes out that I

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recall had got at the specific number of investigations, referrals that were being discussed.

Q You mean the fact that there were nine criminal referrals?

A Yes, I believe that's the number.

Q Anything else come to mind as the type of information that was redacted?

A As I recall, Ellen Kulka wanted to redact the President's name, and we would not agree with that, since that was basically known information at the time, a public figure or something like that. I don't recall the exact legal basis that we argued that.

Q Well, let me ask you about that.

Certainly by late July, 1994, it was widely known among the public that that were nine criminal referrals that were made to the Department of Justice in the fall of 1993, correct?

A I don't know whether it was widely known.

It had been reported that, reported that, but that is not something that the RTC had acknowledged publicly.

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Q So it was the RTC's position that information which even though it had been, it had been released publicly in an unauthorized way, had to be viewed as privileged or confidential if the RTC had not formally released the information.

Is that right?

A I believe that's the case. RTC had not acknowledged formally and publicly that information.

Q And that's why the number nine was redacted from the deposition transcripts, correct?

A Yes, the exertion of privilege, I guess.

Q Now what other information, other than the fact that there were nine criminal referrals, was redacted from the transcripts?

A That's really all that I recall.

Q So is it fair to say that this confidential information, confidential RTC information that was ultimately redacted from the deposition transcripts was information which although not formally released by the RTC previous to that time, was information that was still in the public domain as of July 1994?

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A That would be speculation since I don't recall, you know, other than that one piece of the nine, the number, I really don't recall the substance of what the redactions were.

Q Let me ask you this, let me ask it this way.

Do you know of any information, any confidential RTC information that was ultimately redacted from any of those deposition transcripts that was not already in the public domain as of July 23, 1994?

A I don't recall anything with any level of specificity in terms of what it was, but there was an addition or an amendment to Leon Curtis' statement that I believe that we redacted part of because it was very sensitive.

And like I say, I can't remember the substance of it, but I just recall that he had sent in a E-mail suggesting a certain change to his statement that was meaningful. Now whether that was redacted or not, I don't recall.

Q Okay, let me rephrase the question this

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way.

Can you identify for us any confidential RTC information contained in any of those deposition transcripts that was ultimately redacted?

A No.

Q But which was not already in the public domain as of July 23rd, 1994?

A No, I cannot do that.

Q Do you know of any evidence that anyone, any White House official ever used any confidential RTC information contained in those deposition transcripts for any improper purpose?

A No, I do not.

Q Do you have any information that any confidential RTC information contained in any of the deposition transcripts was ever transmitted to a subject of the RTC's underlying investigation?

A No. Not that I recall.

Q Let me ask you some questions about a one-page document that's Bates stamped 025252, which you've previously identified as a chronology prepared by Patricia Black.

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Is that correct?
A Yes, I understand.
MR. GIBSON: May I interrupt. Isn't that A?
MR. KRAVITZ: Well, I'm asking him about the principal document. I'll get to that. I'm asking him about the regular document.
BY MR. KRAVITZ:
Q 025252 is a one-page chronology prepared by Patricia Black, is that correct?
A I believe it was prepared by Pat, yes.
Q Now you're looking at something that we've all marked 025252A.
A Right.
Q Which is Ms. Black's chronology with some of your own handwritten additions.
A Correct.
Q When did Ms. Black prepare 025252?
A It's dated in the upper left hand corner 2/2/95, so I would assume that it was somewhere around that stage of the game.
Q Were you present when Ms. Black prepared

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this chronology?
A By present, I mean, was I working or was --
Q Were you with her when she prepared it?
A No, I was not standing with her when she prepared the document.
Q Were you consulted when Ms. Black prepared this, to your knowledge?
A She used my calendars.
Q So your calendars were consulted?
A Right.
Q But you weren't consulted?
A Not that I recall.
Q What's your understanding of the purpose for which Ms. Black prepared this chronology?
A I do not recall what that was.
Q Well, you've seen this chronology before today, right?
A Yes, I have.
Q Did Ms. Black give it to you?
A No, I've had one for quite some time. I'm trying to recall whether it was just put together

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when we started receiving requests for copies of documents to come up here. I just, I don't remember exactly when it was.

Q How have you used this chronology to refresh your memory?

A For the purposes of this. Simply reviewing it and looking at my calendars, and looking at the other documents that came from my files.

Q Would you be able to testify today about dates of meetings or participants at meetings without this chronology?

A Certain parts of it, yes.

Q Which parts would you not be able to testify about without this chronology that you've already testified about?

A Well, I might not be able to get everybody who was at a meeting, get their name in there. I could not testify factually about things that occurred during the week of my absence. By factually, I mean, I could report what I was told but not what I heard during that process.

General dates of meetings, I think I might

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not get them as precise if I didn't reference this, but overall I think I could get it.

Q Did you have a meeting with Ms. Black, Mr. Adair, Mr. Blight, Ms. Herlihy and Ms. Dwyer, recently to discuss all of your testimony before this Committee?

A Yes.

Q When was that?

A Thursday or Friday.

Q Of last week?

A Of last week.

Q How long did that meeting last?

A I was in and out of that meeting a couple hours, three hours. That's just a guess. It was something like that.

Q Who called that meeting?

A I'd say probably Patricia. It was like a collective thing.

Q And what was your understanding of the purpose of that meeting?

A Simply to talk about this case that would help us refresh our memories.

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Q Was the chronology 025252 used in the meeting last week?
A Yes, it was.
Q How was it used?
A Simply as a chronological basis to discuss what had gone on back at that stage of the game, back, you know, a year ago when we were doing this work.
Q What did you all talk about for three hours?
A Different aspects of the things that are here. In other words, for example, you know, trying to remember what was discussed at a meeting with OGE, what was discussed at, for example, the investigative team's meeting at ICC. I wasn't there. I had no idea what was going on, and I don't know whether there was anything of substance there.
But just different pieces of it were talked about. That was all.
Q Were there any subjects discussed during the three-hour meeting last week on which people had different memories?

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A I'm sure there were, but I can't say that I can specifically identify anything.
Q Do you have any general recollections of what those divergent memories related to?
A No, not really offhand. It might have been a specific date or something like that that was going on.
Q Did it ever occur to you that this meeting that occurred last week was exactly the same or almost exactly the same as what you all were criticizing the White House for with the release of these transcripts?
A No.
Q Anyone talk about that last week?
A Not that I recall. I was in and out of the meeting, but I can't imagine why it would have come up.
Q Wasn't one of the reasons that you say you were troubled by the release of transcripts to the White House that witnesses would find out what other witnesses were saying before they went and testified somewhere?

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A I guess so. That's potentially the situation. I don't know that we view ourselves as targets. I certainly don't.
Q And we've already said that -- and you've already testified that you didn't hear any of the White House people as targets of your investigation, either, right?
A Right.
Q You knew you were coming to testify here today, right?
A Yes.
Q And in fact the purpose of the meeting was to prepare for your testimony here today?
A Right.
Q When did you add the handwritten notes to Ms. Black's chronology?
A This, this specifically?
Q The document that we've now marked as 025252A?
A Yesterday morning.
Q What are these notations based on? What's your memory of these events that you've added in your

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handwriting, what's that based on?
A Well, just different documents or knowledge that I had that would help me remember some of these things. Like I saw the June 27th letter concerning, it's up there chronologically from Cesca to Hansen concerning the independence of his counsel.
Q Let me give you, --
A So I just inserted that.
Q Let me give you an example.
Do you see the entry, 7-18 "started giving transcripts to witnesses." You see that?
A Yes.
Q How do you know that?
A I believe I saw that in an E-mail that we had.
Q This is an E-mail that you all were looking at last week at the meeting?
A I believe it's an E-mail in the material that came out of my files.
Q Okay.
A Or one that I've seen, but I believe it was one that I had of mine.

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Q What about the entry 7/5, July 5th, Pat, Francine, Sherbourne and Cheston meet at Treasury.
A Yes?
Q How do you know that?
A Pat Black told me.
Q Now is that something that you all discussed at the meeting last week?
A Well, the other thing is that of course is a tag onto the July 5 above, also.
Q Okay, but is the meeting at Treasury with Pat, Francine, Sherbourne, and Cheston something --
A That was talked about?
Q -- that was talked about at the meeting last week?
A Yes, to some extent it was.
Q And was it based on that conversation that you added this entry to the chronology?
A No.
Q You knew about it?
A Once again, that goes back to my personal notes that you've got copies. I did that, and if I had looked and seen it tagged on the bottom of the

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earlier one, I wouldn't have written it down.
Q Fair enough.
I'm going to ask you some questions about Francine Kerner.
I believe you testified that her formal position is counsel to the Inspector General at the Department of Treasury?
Is that what you testified to?
A I honestly don't know specifically what I call her.
Q What is your understanding of what her formal position is?
A I do not know what her formal position title is. She works within the office of general counsel in the Department of Treasury, but her key position in that office is to provide legal guidance and advice to the Office of Inspector General.
Q Does the Office of Inspector General at the Department of Treasury have its own general counsel's office?
A Not located within the Office of Inspector General to my knowledge, unless it's something that's

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happened very recently.
Q But as of the summer of 1994, your understanding is that the IG's office at Treasury did not have its own counsel's office?
A That's correct.
Q It used lawyers from Treasury's general counsel's office?
A That's correct.
Q And it was in that capacity that Ms. Kerner was working on this investigation?
A Yes, to my knowledge.
Q Is it your understanding then that this was not a unique situation in which a lawyer from the general counsel's office at Treasury was detailed over to the Inspector General's office to assist in an investigation?
A No. This is how they conducted business there all the time. The thing that was unique was this was the first time that they had been investigating our boss, which made it particularly complicated.
MR. GIBSON: Can I ask you to clarify that

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question?
MR. KRAVITZ: Sure.
MR. GIBSON: Are you saying that that is not unique actually the Department of Treasury or is it unique in other Executive Branch agencies, the statutory IGs?
MR. KRAVITZ: I meant to say was it unique at the Department of Treasury.
THE WITNESS: That's how I answered it.
MR. KRAVITZ: Thank you.
BY MR. KRAVITZ:
Q When you testified that at some point in the middle of July, I think you said it was July 18th, RTC officials who had given depositions as part of this investigation were given copies of their own deposition transcripts.
Is that correct?
A Yes, right about that time frame is when we started doing it.
Q And the purpose of that was so the witnesses could review the transcripts and inform you, your office if any corrections needed to be

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made?
A Yes, that's what that was for.
Q What, if anything, were the RTC officials told at the time that they were given their deposition transcripts as to whether or not they could share those transcripts with anyone else?
(Pause.)
A I do not recall specifically. We asked for their comments on them back if I recall within one day.
Q So to your recollection, at the time that the RTC officials were given copies of their transcripts, they were not told anything as to whether or not they could share those transcripts with others, correct?
A I don't have a specific recollection of that, but I do recall that even before we ever started conducting interviews of anybody, we prepared a piece of language that I think you'll find in most, if not all of the transcripts that we tacked on at the end saying that we would like them not to discuss the results of their interview with anybody except of

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course we recognized that there are others conducting similar type of investigations and our asking them not to discuss with other people was not intended for them to refuse to discuss it with another investigative authority.
So each of these people, if not each of them substantially all of them, were advised that we didn't want them discussing the results of that with others.
Q And this was a statement that was read into the record at the end of the depositions?
A Read in or I guess after the investigators read it a few times, they felt that they knew it well enough that they could sing it from heart.
Q But as far as you recall, at the time that the actual transcripts were given to the witnesses, there was no further request made about confidentiality?
A I do not recall that, no.
*Q Do you know why the transcripts of the depositions were redacted before they were given to the Congress back in July or August of 1994?

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A I don't recall specifically. I believe there was a question of simply getting the unredacted versions printed, but I don't recall the details of it.

Q I don't understand.

A Well, I guess the transcripts, you know, were being reproduced for the purposes of the report. And I guess certain of them, I guess that was the redacted ones, so it was a matter of getting unredacted copies prepared to send up here and Treasury was doing that, to my knowledge, so I guess ask them why they couldn't get them up here.

Q But these were, the redactions that appeared in the transcripts that came to Congress were redactions that were made by RTC officials, is that correct?

A They were made by Patricia, yes, sir.

Q And by the people from the Office of general counsel?

A In discussion with people from the office of general counsel.

Q And you don't know why the Senate was

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provided with redacted copies?

A I have no knowledge. I don't recall.

Q Mr. Switzer, I have in front of me, and I'm going to show you in a minute, a copy of an E-mail that's Bates stamped 0368 and 0368. I think there must be numbers cut off on the right.

But in any event, it's an E-mail dated Wednesday, August 3rd, 1994, at 2:32 p.m. from Patricia Black to John Adair, Steven Switzer, and Clark Blight. Subject: Transcripts/White House Letter.

I want to direct your attention, if I could --

Well, let me ask you first. Do you remember receiving this E-mail from Ms. Black?

A Yes. I mean, I've read it in my material.

Q In the third paragraph on the first page, Ms. Black writes, quote: "I think that Sherbourne had thought that there was not a definitive refusal, because although I said the RTC IG would not agree to that, Kerner was more sympathetic to the problem that Cutler had. Sherbourne and Cheston had said that in

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order to do a full investigation for the White House, they need to have the testimony of Treasury and RTC personnel, but if they tried to interview them, they were afraid that they would be accused of trying to intimidate people. I had agreed that that was a potential problem but that it would be worse for us to violate our normal procedure and turn over the transcripts before the report was finished. Kerner thought there might be room for further discussion but I did not." End quote.

Did you ever discuss with Ms. Black the conversation that actually occurred between herself, Ms. Kerner and Sherbourne and Cheston that's summarized in this E-mail?

A Yes. On July the 6th, I believe, you've got my personal notes, I wrote a note.

Q Do you want to look at those?

A I don't have to. I mean, yes, we discussed her meeting, Patricia and Sherbourne, Francine and Cheston meeting and I wrote down some pretty detailed notes about what took place in there.

Q Let me focus your attention on the fact

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that Ms. Black appears to be referring or describing some lack of clarity as to whether there really was a refusal to provide the transcripts. Specifically when she says, I think that Sherbourne had thought there was not a definitive refusal, that refers to a refusal to provide the transcripts to the White House, correct?

Is that your assumption?

A I don't read that to indicate that Patricia's waffling. I think Patricia's simply saying that Sherbourne's confused.

Q That's my point.

Did you discuss with Pat Black, at any point after July 23rd, after the date that the transcripts went to the White House, her sense that Jane Sherbourne may very well have been confused about whether or not the RTC refused to provide the transcripts to the White House?

A No, I don't recall that because I don't, based on my understanding and the notes that I took from my conversations with Patricia, following her meeting on July the 5th, I don't think there was room

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for Sherbourne not to understand where we were coming from.

Q How about -- well, would you agree with me that this E-mail seems to, that this E-mail indicates that even if what Ms. Black was saying was clear, that what Ms. Kerner was saying at that meeting could have created confusion in Jane Sherbourne's mind?

A Could have in terms of what she thought of Ms. Kerner, but I don't believe there was any confusion about where we were coming from. That would of course be speculative.

Q Did you ever respond to this E-mail which is marked 0368 and then there's probably a number missing?

A Not that I recall.

Q Have you ever discussed this E-mail with Patricia Black?

A Now wait a minute. Say that number again.

Q Well, what number do you have on yours?

A I'm looking at 0609.

MR. GIBSON: The number seems to be cut off on the first page of this copy.

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THE WITNESS: You said something about a 6 -- well --

MR. KRAVITZ: Well, this E-mail may appear in different files.

THE WITNESS: Okay.

MR. KRAVITZ: I've got, it's a Wednesday, August 3rd E-mail 14:32 from Black to Switzer and Blight.

THE WITNESS: Right, okay.

Did I respond? No, I don't recall.

BY MR. KRAVITZ:

Q Have you ever discussed with Ms. Black?

A We discussed, when we looked at the copy of the letter that we got to see. Some place amongst your documents there's a fax that officials sent back over there that's got a typed note on the bottom of it to Sherbourne, discussing our thoughts on their correspondence.

Q On the letter from Cutler to Riegle?

A Yes.

Q So, what, you discussed --

A Possibly as it was proposed.

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Q What was that discussion?
A Basically capturing the substance of this language up here where we're saying that the wording that they have in there is written in such a fashion that the White House would make people available for interviews. That's their tit. Our tat would be, we'll give you copies of the transcripts.
In other words, one could have read it in that fashion, and we wanted that corrected because that was not the case.
Q Okay. But you never had any substantive conversation with Ms. Black about what she appears to view as inconsistent signals having been given to Jane Sherbourne at the meeting on July 5th regarding the question whether transcripts could be provided to the White House?
A Yes, I had detailed discussions with her the following day on the 6th.
Q Okay, I'm talking about after August 3rd.
A No, nothing that I recall.
Q How about after July 23rd, 1994? Did you ever discuss Ms. Black's view that perhaps

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inconsistent signals had been sent to the White House in that July 5th meeting?
A Not that I recall, keeping in mind that I was in Texas at the time. When I got back, the general reaction of the people was the amazement of the fact that the transcripts went over there just I think spoke for itself for me.
Q Did you have this E-mail with you at the meeting last week that you all had to get ready for depositions?
A Yes, I'm sure I did.
Q Was it discussed, to your knowledge?
A Not specifically it was not.
Q I'm going to show you what I think is marked 03689 and 03690, which is an August 3rd, 1994 letter from Lloyd Cutler to Senator Riegle. I believe that's the final version of the letter that you've referred to previously.
Have you seen that letter before?
A 3689? Yes, I have.
Q Did the White House accept all of the suggested edits to the letter?

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A Without me revisiting exactly what we said, I don't know.
Q Is there anything about the final version of this letter which you find to be misleading or inaccurate based on your knowledge?
A Not that strikes me offhand, no.
MR. KRAVITZ: Thank you. That's all I have.
MS. FISHER: I have just a few follow up questions.
FURTHER EXAMINATION
BY MS. FISHER:
Q I would like to show you a letter marked 6877 from Steven McHale to Jane Sherbourne dated July 23rd, 1994, which we discussed earlier.
Am I correct in saying that in the second paragraph of this letter, it says you've agreed that the transcripts we're providing to you will not be disclosed publicly or shown to individuals other than Mr. Cutler who may be called as witnesses by either Committee until such time as we advise you that this restriction is no longer necessary.

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A Yes, that's what it says.
Q Do you have any knowledge that that restriction was ever lifted?
A Not personally, no.
I mean that's something I guess that Treasury people would -- I mean, that's who would have the answer to that.
Q But you have no knowledge that it was?
A No.
Where McHale gets off putting restrictions on the use of IG documents is a little strange too. Usually we do that for our documents.
Q And in fact some of these transcripts were RTC transcripts?
A Yes. Plus they were all part of the investigative report that was the IG's report.
Q Right.
In this letter that Mr. Kravitz was just questioning you about, August 3, 1994 letter from Mr. Cutler, in the second paragraph on the second page, it states "these transcripts were used by me and my staff to complete my review of these matters and

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prepare my congressional testimony. We did not provide copies to anyone."

Is that correct?

A That's what it says.

Q And that appears to be consistent with the restriction placed on the transmittal of the --

A Except for whoever his staff is.

Q Except for this.

A This says going to her, and it can be shared with Cutler, and Cutler is saying me and my staff have used them, so his staff is Jane Sherbourne, and everything's cool.

Q And would you agree that the statements of this article attributed to Mr. Cutler of May 5, 1995, which we discussed earlier, that Lloyd Cutler acknowledged this week that the depositions were used to identify discrepancies in the recollection of presidential aides for congressional hearings, and it goes on to say that Mr. Cutler said if we found inconsistencies, we would go back to the White House officials and go back over testimony they gave us, and then we would say we have heard other reports.

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Is that inconsistent with what you understand Mr. Cutler's letter to suggest on August 3rd, 1994, that statement which the press attributes to him?

MR. KRAVITZ: Is that a question that this witness needs to answer?

MS. FISHER: You were asking him the same kind of questions.

THE WITNESS: It sort of seems to me, yes.

BY MS. FISHER:

Q I believe that you testified in response to -- oh, sorry.

(Pause.)

The unredacted copies of the transcripts were released prior to White House officials or others testifying before the Committee on Banking, Housing and Urban Affairs, pursuant to Senate Resolution 229.

Is that your understanding?

A I believe that's true.

Q I believe that you told Mr. Kravitz that it was your recollection that all but two interviews

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had been concluded by the time that the transcripts went over to the White House on July 23rd.

A Yes, I think that's what I said, Ludwig and Bentsen.

Q And the two were Ludwig and Bentsen.

Is it possible that during the two remaining interviews that were being conducted, or during the final editing of the report, the IG could have decided to interview more individuals, including White House employees, before the final report was issued?

A Sure.

Q So in that case --

A I mean, the decision to interview Ludwig was made very close to the last minute.

Q And the same could have been true of a potential decision to interview other White House employees?

A Right.

That's kind of speculative, but --.

MR. GIBSON: Before we move on, Steve, for the record, was anybody else interviewed after Ludwig

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and Bentsen, just to put it in context?

THE WITNESS: Not that I recall, no.

MR. KRAVITZ: Can I ask one follow up question on that subject?

FURTHER EXAMINATION

BY MR. KRAVITZ:

Q Was the fact that no other White House officials were deposed after Ludwig and Bentsen affected in any way by the fact the transcripts had been sent to the White House on July 23rd?

A Not to my knowledge, no.

FURTHER EXAMINATION

BY MS. FISHER:

Q However, the point is is that they were transferred while the investigation was still on-going and all decisions regarding the scope of the investigation were not completed at that time.

Isn't that correct?

A Yes. I mean, the transcripts were given to Treasury about the 21st.

Q Other than, I believe Mr. Kravitz asked you some questions about whether there was any,

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whether you had any knowledge of any testimony being changed as a result of the release of the transcripts.

A And I think I said nothing personal.

Q Because you didn't take it upon yourself to go compare, is that correct?

A I did not do that.

Q And isn't it true that there could have been other uses of this confidential RTC information -- strike that.

Isn't it possible that the White House officials who received the confidential RTC information by way of the unredacted transcripts sent to them on July 23, 1994, could have used that information for reasons other than changing their testimony?

MR. KRAVITZ: Are you asking this, I mean, I object.

MS. FISHER: There's a possibility.

MR. KRAVITZ: Well, I object.

MS. FISHER: Well, object.

MR. KRAVITZ: I object to this question as

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completely, I mean, it's just the rankest speculation and, you know, the witness has testified already that he has no evidence, knows of no evidence that any of this confidential information was used for any improper purpose.

And I just, you know, I don't know why at quarter of 7:00 in the evening, we need to be putting all this speculation into the record. It serves no productive purpose.

MS. FISHER: I don't believe that I requested him to speculate, but that's --

MR. KRAVITZ: When you ask a question, is it possible that, that calls for speculation.

BY MS. FISHER:

Q Do you have any knowledge that this confidential RTC information that was transmitted to the White House was not used for an improper purpose?

A No.

Q And I believe it was your testimony that Ms. Kulka believed that this information that she directed be redacted from the deposition transcripts of RTC employees prior to the issuance of the final

report was considered on behalf of the RTC to be confidential non-public information.

Is that correct?

A Yes. She didn't direct, she requested certain redactions, most of which we agreed with, but not all. That was the basis.

MS. FISHER: Okay.

I believe that's all I have.

Thank you.

(Whereupon, at 6:50 p.m.,. Tuesday, October 10, 1995, the taking of the deposition ceased.)

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, JANE W. BEACH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Jane W. Beach

Notary Public in and for the
District of Columbia

My Commission Expires NOVEMBER 14, 1996

OFFICE OF
INSPECTOR
GENERAL

RESOLUTION TRUST
CORPORATION

Counsel to the Inspector General

November 6, 1995

Alfonse M. D'Amato, Chairman
Special Committee to Investigate Whitewater Development
Corporation and Related Matters
534 Dirksen Office Building
Washington, D.C. 20510

Dear Chairman D'Amato:

On behalf of Steven A. Switzer, enclosed is an errata sheet reflecting changes to the transcript of his deposition taken by the Staff of the Special Committee on October 10, 1995. In light of the fact that hearings are scheduled to commence tomorrow, I have taken the liberty, by copy of this letter, of providing a copy of the errata sheet directly to Alice S. Fisher, Associate Special Counsel to the Special Committee, and to Neil E. Kravitz, Principal Deputy Democratic Special Counsel.

Page 114 of Mr. Switzer's deposition reflects a request by Mr. Kravitz for production of a copy of the RTC Office of Inspector General investigation manual. This document was produced to the Special Committee on October 12, 1995.

Please contact me on 703-908-7807 should the staff have any questions regarding the enclosure.

Yours very truly,

Fred W. Gibson, Jr.
Senior Attorney

cc: Steven A. Switzer, Deputy Inspector General
Alice S. Fisher, Associate Special Counsel
Neil E. Kravitz, Principal Deputy Democratic Special Counsel

DEPONENT Steven A. Switzer (October 10, 1995)

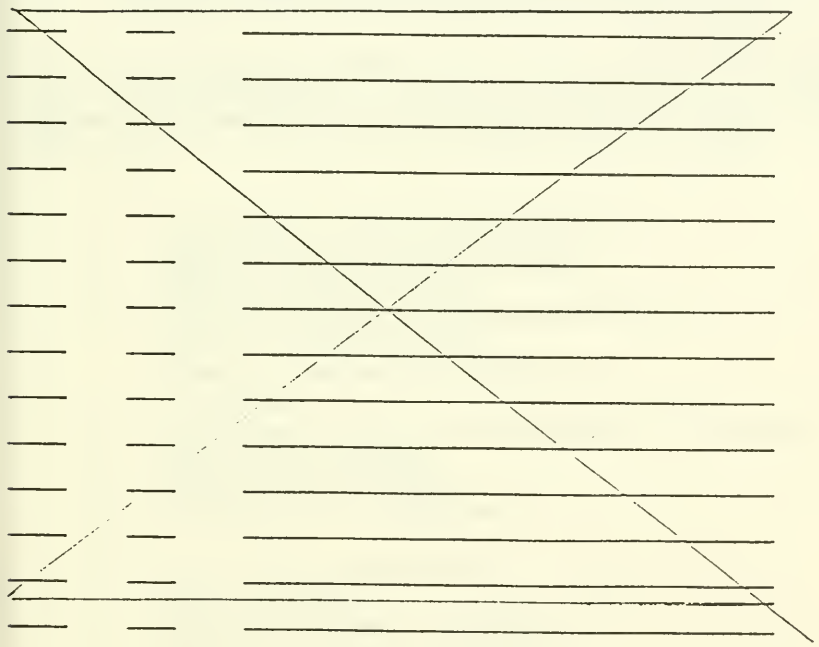
ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
1		Delete:Fred Gibson, Esq. from majority counsel line		
		Add"Fred W. Gibson, Jr., Esq.		
		Office of Inspector General		
		Resolution Trust Corporation		
		1735 N. Lynn Street		To correct record of appearance
		Rosslyn, VA 22209		
		On behalf of Deponent."		
		below "On behalf of the Committee.		
28	10	Shelia	Sheila	spelling
29	1	was	were	grammar
35	9	office	offices	grammar
40	13	delete 1st 'of' (2nd word in sentence)		grammar
41	15	wether	weather	spelling
56	3	revising	revisited	trans. error
59	1	the	your	trans. error
63	2	your	our	trans. error
63	18	reference	references	grammar
90	3	Mrs.	Ms.	trans. error

DEPONENT Steven A. Switzer (October 10, 1995)
Page 2 of 2

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
115	8	insert "a" before "loaded"		grammar
117	7	MS. FISHER	MR. KRAVITZ	trans. error
148	4	actually	at	trans. error
148	5	insert "among" before "the"		trans. error



DEPOSITION OF JANE LEY
IN RE: S. RES. 120

WEDNESDAY, OCTOBER 11, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of JANE LEY, called for examination pursuant to notice of deposition, at 3:31 p.m. in Room 640–A of the Hart Senate Office Building before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, ESQ.
Majority Associate Special Counsel
NEAL E. KRAVITZ, ESQ.
Minority Principal Deputy Special Counsel
JAMES S. PORTNOY, ESQ.
Minority Associate Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

MARILYN L. GLYNN, ESQ.
Attorney Advisor
Office of the General Counsel
U.S. Office of Government Ethics
1201 New York Avenue, NW
Suite 500
Washington, DC 20005–3917
On behalf of the Deponent.

ALSO PRESENT: MARK BRENNER

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PROCEEDINGS

MR. O'CALLAGHAN: Ms. Ley, my name is Michael O'Callaghan. I'm counsel with the Majority on the Special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Incorporated, the Arkansas Development Finance Authority and other related matters. With me also is Mark Brenner.

Section (1)(b)(2)(e) of Senate Resolution 120 authorizes the investigation and public hearings into whether the report issued by the Office of Government Ethics on July 31, 1994 or related transcripts of deposition testimony were improperly released to White House officials or others prior to the testimony before the Committee on Banking, Housing and Urban Affairs pursuant to Senate Resolution 229, or were used to communicate to White House officials or to others confidential information relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation.

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By and large, that will be the focus of today's deposition. This deposition is in advance of public hearings that will most likely be held on the subject. If you need a break, let me know and we'll be happy to do that. If you don't understand a question, I'll rephrase it. The testimony you will be giving will be under oath today. The stenographer will prepare a record of the questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings.

Prior to the hearings, you will receive a letter from the committee telling you that you may come to the Senate to review the transcript of your deposition and make note of any corrections for transcription on an errata sheet.

If you are called to testify at public hearing, you will be permitted to have a copy of your deposition transcript four days in advance of your testimony. You may be represented by counsel. Objection to the form of questions will be noted for the record. Counsel may object on grounds of privilege or relevance and the committee chairman may

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rule on objections where the witness refuses to answer a question.

Are you represented by counsel today?

THE WITNESS: Not personally, no. Ms. Glynn is here as a member of OGE staff.

MR. O'CALLAGHAN: And Ms. Glynn, for the record, could you state your name and position.

MS. GLYNN: My name is Marilyn Glynn, and I'm the associate general counsel at the Office of Government Ethics.

MR. O'CALLAGHAN: Thank you. Would you swear in the witness, please.

Whereupon,

JANE LEY

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. O'CALLAGHAN:

Q Could you please state and spell your full name for the record.

A Jane, plain Jane, Ley, L-e-y.

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Q And your present business address?

A 1201 New York Avenue, Northwest, Suite 500, Washington, D.C. 20005.

Q Who is your current employer?

A The Office of Government Ethics.

Q What's your position there?

A Deputy general counsel.

Q Could you give me a general overview of your employment history.

A Since law school or before?

Q The entire employment history.

A Okay. I was employed during -- as soon as I became eligible to be employed as -- I worked for the First State Bank of Leoti, Kansas in high school for three summers.

Q You can tell me after college, that's fine.

A I was just getting to the feed lot, that was next.

Q It sounds interesting. If you would like to tell us about it, that would be fine.

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A All right. No. In college I worked for the -- in the summers I worked for the county clerk of Wichita County, Kansas, and during harvest I drove a combine. And in law school I worked for the National Endowment for the Humanities as a law clerk for two years. Following law school I worked for the Hawaii State Ethics Commission as associate director for three years and then in 1979 I came to the Office of Government Ethics. I started as a staff attorney and then became the deputy general counsel in 1988. That might be -- late '80s, one of those years in there. And that's where I'm at.

Q And can you give me a brief overview of your education history, where you went, when you graduated and what you studied?

A I went to high school at Leoti, Kansas in the Wichita County High School. I went to Kansas State University, which is part of the Big 8, where I started out in engineering and then finished up with a degree in political science and history, a BS degree, and then I went to George Washington University for law school.

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Q Have you had any other kind of educational experience, any other degrees?

A No other degrees, but on occasion I would take a course here or there.

Q From what you've just told me, you were working at Office of Government Ethics between March and August of 1994; is that correct?

A Yes.

Q And who did you report to during that time period at Office of Government Ethics?

A Well, the general counsel when he was there, the director.

Q Who is the general counsel at that time?

A Gary Davis.

Q You said "when he was there."

A He was out a period of time in that year because of -- he fell off a ladder and broke his bones and then he was ill and then he took a vacation, but it was a bad year for him.

Q Sounds like he needed a vacation.

A Yes. So I was the acting general counsel probably as much as he was there.

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Q Were you acting general counsel during the time March through August 1994?
A In part.
Q Part of that time?
A Uh-huh.
Q How about during July of 1994?
A The last two weeks of July he was in Italy so I would have been, yes. I don't know where -- he might have -- I don't know about the first two weeks, but I certainly know he wasn't there the last two weeks.
Q How do you know he wasn't there the last two weeks?
A Because he was in Italy and because I was doing his job and mine during this period of time when a lot was going on.
Q When you say "a lot was going on," what are you referring to?
A Well, we had -- our office was reviewing transcripts that the inspectors general at Treasury and RTC were providing us for their review of the contacts of the Treasury officials with the White

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House. There were a number of other issues that were bubbling around in the office unrelated to this.
Q And during this time period, March through August of 1994, did you have anyone who reported to you?
A Well, the staff of the general counsel's office, depending on whether Gary was there or not. There were people who generally work with me but are not specifically supervised by me.
Q Who were the people who generally worked with you at that time?
A Our Congressional affairs, there were two attorneys that worked on legislative matters and I would generally supervise their work on that issue.
Q What were their names, I'm sorry?
A Their names?
Q Yes.
A Steve McCleary, Jim O'Sullivan, but mostly Steve McCleary. Then when Gary was not there, then I would be reviewing whatever anybody at the general counsel's office was doing.
Q So you didn't have any specific deputies or

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assistants during that time?
A No.
Q Are you personally aware of the committee's document request to the Office of Government Ethics?
A Yes.
Q Did you search for responsive documents, notes, reports, memoranda?
A Yes.
Q Have all responsive documents been produced?
A That I had any -- that I know of. I understand they're still looking, doing something with computer tapes.
Q Have you spoken with anyone other than your counsel prior to this deposition about this deposition or the subject of it?
A The subject of it, yes.
Q Who have you spoken with?
A I spoke to the director and the deputy -- and the general counsel.
Q Of OGE?
A Yes.

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Q And what did you discuss?
A Well, they came back from this morning and I said what's the drill, and they discussed the drill.
Q Did they discuss the substance of the deposition?
A They discussed -- they indicated the general nature of the questions that Steve had been asked, Mr. Potts had been asked.
Q Did they touch on the subject areas?
A Well, yes.
Q And other than the director and the general counsel, did you speak with anyone else?
A Well, people knew that I was going to do it, that my deposition was scheduled for today. I spoke to the counsel to the RTC IG and she had mentioned hers was tomorrow, I think, and I said well, mine was today.
Q And did you discuss with anyone what your testimony would be today?
A No.
Q Did you have a role in preparing a report

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that was -- regarding possible improper contacts between the White House and Treasury during July of 1994?

A I had a role in our office's analysis of the Treasury contacts with the White House.

Q And what exactly was your role?

A I read all the transcripts, I assisted in the drafting of the analysis, I supervised and coordinated some reading of transcripts by other staff attorneys to make sure that chronologies were correct and nothing was misstated. I typed.

Q How many people worked on the production of the report?

A Primarily two people worked on the production of the written document: Myself and Leslie Wilcox. However, there are sections of the report that we received assistance from other attorneys in the office. We had one -- I had one attorney review and research confidentiality and FOIA information.

Q What was this attorney's name?

A Stuart Rick. I had -- I think there was, I

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think Ms. Glynn was asked to read drafts just of analysis, and I also had -- are you ready for all these names?

Q Oh, yeah, please, go as quickly as you want. It's all being recorded.

A Let me tell you what they did first and then I'll tell you who they were. Then at one point, I got a number of people in the general counsel's office, assigned them transcripts from individual -- each would get like two or three individuals' transcripts. They were to read those transcripts and be very familiar with those transcripts. Then we gave to them as a group a chronology of events with our description of what happened on those events, and they were to be able to say -- to check that chronology against their individual transcripts, they were supposed to know their people cold so that we -- that chronology would be correct and that we had not misstated anything that somebody had said.

So there was a working team of people who did that.

Q Were the original chronologies set up using

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the transcripts or using other information?
A Yes, the original -- the chronology that is in the format, that's in the record was set up by using the transcripts. We had a law clerk in the summer -- we had a law clerk that summer. We had, just as a project, had him go back through newspaper articles and create a chronology for us even before we were doing anything else because, you know, just to see what he could find out from the newspapers about what happened. I think that chronology was produced as one of the records.
Q You said Leslie Wilcox was one of the two people who helped prepare the report with you?
A She was the primary drafter, yes.
Q What was her position?
A She was an associate general counsel as well.
Q When did you first learn that your office was requested to prepare a report about the White House Treasury contacts?
A Our deputy general counsel came down the hall, when was it, when was that, March 2 or 3, he

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had received a telephone call from Mr. Foreman at Treasury indicating --
MS. GLYNN: Deputy director you mean?
THE WITNESS: What did I say? I'm sorry, deputy director. I didn't come down the hall myself. He had received a call from Dennis Foreman at Treasury.
BY MR. O'CALLAGHAN:
Q So what's his name?
A Donald Campbell, Don Campbell. Late in the day, said he had received a call from Dennis Foreman indicating to him that the Secretary was going to ask us to do this.
Q And how soon after did he tell you that he had gotten a call from Mr. Foreman?
A Probably just hung up the phone and walked down the hall because then he was leaving for the day. And later that same day, I then got a call from Mr. Foreman, who also told me that, but after it had hit the news.
Q And what did Mr. Foreman relate to you on the phone when you spoke with him that day?

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A Well, I certainly can't do this verbatim because it's been too long.
Q That's fine.
A But the general gist of what he said was that the Secretary was going to ask us to do this. I think he used the word "investigate" and I got very clear with him that we didn't do investigations.
Q So you corrected him?
A I did.
Q Did you discuss anything else during the phone call or was that the only subject of conversation?
A No, the only subject of that conversation was what the Secretary was getting ready to ask us to do or had asked us -- told the press he was asking us to do or however you want to --
Q Did he specifically relate to you what the Secretary wanted done, what his understanding was of what the Secretary wanted done?
A Again, my general recollection is that he -- the Secretary wanted us to look at what was happening there, he wanted it out of the department

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and had somebody else outside of the department to look at it.
Q Did he relate to you why the Secretary chose the Office of Government Ethics to look at this subject?
A He did not.
Q Have you since learned why they were chosen?
A Never -- nobody has ever told me specifically, no.
Q Are you aware if any other government entity requested OGE conduct a review or report about the White House-Treasury contacts in question?
A Well, we had gotten a letter from -- or within days, I can't tell you, like two days before or three days after but sometime in that same general area we had gotten a letter from Representative Leach.
Q Any other contacts?
A Not that I can recall. That doesn't mean there weren't, but nothing -- I don't recall any others.

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Q I understand you can only testify as to your knowledge, which is fine.
A Yes.
Q Did anyone at OGE act as a liaison between the Resolution Trust Corporation inspector general's office and the Treasury inspector general's office?
A Primarily I did.
Q Who were your contacts at those respective offices or who did you deal with?
A Well, I started dealing in each instance with -- by setting up a meeting with the inspector general, in the Treasury it was the acting inspector general, Mr. Cesca, and he had a staff, Francine Kerner, another woman whose name I can't remember and maybe an investigator, but I'm not sure about that.
Then I met with the RTC general counsel, Mr. Adair, and his counsel, Pat Black, and probably a couple more of his investigators. My guess is it was probably Steve Switzer and Clark Blight, but I can't -- I'm not certain who it was. I don't have any notes from the meeting.
Q When did you have your first meeting with

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Treasury IG people?
A In March sometime.
Q Do you know the date?
A I don't know off the top of my head. I might be able to reconstruct it someplace but I don't know.
Q What were the substance of discussions at the first meeting you had with Treasury IG's office?
A What OGE didn't do was the primary thing.
Q That you didn't run investigations?
A That's right.
Q And what else was discussed?
A Well, just generally what the possibilities might be of, if the independent counsel decided that an administrative investigation would not impede his activities, what the possible scenarios would be.
Q Do you recall what some of the scenarios were that were run over?
A That an investigation would be done, you know, the Secretary could ask the IG to do an investigation. We had suggested upfront that since the individuals were acting as RTC employees, that

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the RTC inspector general be involved, too, and that we could provide assistance to the IGs in terms of what might be the ethical -- or the standards-of-conduct issues or statutory issues if that became -- that would be involved and what kind of role we could play.

Q Were the people at Treasury IG aware that OGE did not generally conduct investigations when you --

A I think so.

Q Why did that subject come up? Why did you feel the need to impart that you didn't conduct investigations at Treasury IG?

A My recollection is that I kept being angry reading in the newspaper that we were conducting an investigation, so I would say that to anybody. I would start any conversation off with that.

Q Okay. And you said that you all suggested upfront that RTC IG be involved in any investigation?

A It's my recollection we suggested that to Secretary Bentsen when we got back to him.

Q That was in written correspondence?

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A I believe so, yes.

Q During the period March through July up until August of 1994, did you have any contact with anyone at the White House?

A Probably daily.

Q And who did you deal with at the White House?

A Primarily I would deal with counsel's office, Beth Nolan, Cheryl Mills, Kathi Whalen.

Q Anyone else at counsel's office?

A I may have been contacted by -- they have people there who borrow to help them review financial disclosures and things. I may have gotten a call from one of them on occasion. I don't recall, but that could have happened.

Q Did you have any contact with anyone at the White House with regard to the White House-Treasury contacts that OGE was reviewing at the time?

A The counsel's office or the White House, I'm not sure exactly who brought it in, brought in Jane Sherburne and another young woman, I believe that they borrowed from the State Department and

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maybe somebody that they borrowed from the Navy Department to do their internal review. And I certainly dealt with them.

Q If the other people's names come to you during the course of the deposition --

A I will.

Q Thank you.

A If I could see my phone log, I can tell you who they are. Sharon Conoway. The woman from the Navy is not going to come to me, though. I know that. I kept forgetting it at the time as I remember. It was embarrassing.

Q You said that they were working on an internal review or investigation?

A I'm sorry, I spoke to Mr. Cutler or was in meetings with Mr. Cutler.

Q Going back to Jane Sherburne and Sharon Conoway, what did you do in connection with them? You said they were part of a review team or --

A It was my understanding that the White House or the counsel's office had asked them to do the internal review of the White House officials'

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activities, and that's what they were doing. And certainly we dealt with them like any other agency who had a review going on or might have had a review going on of their employee's conduct.

Q When did that review begin?

A I don't recall exactly.

Q Was it about the same time as the OGE review, before, after, during?

A Well, it certainly was going on at the same time. I don't remember whether they started something before Mr. Fiske said okay to Treasury IG and the RTC IG or not. I simply -- I simply can't recall when they were -- when they started, when they showed up.

Q What type of discussion did you have with them regarding their review?

A I believe there was an initial meeting in Mr. Cutler's office with the director and the general counsel and myself were invited over there, and we just discussed generally what kind of support services or support or advisory services we provided to an agency that was conducting its own review of

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employee conduct.
Q So in "agency," are you including the White House in that or are they asking about another agency?
A No, no. Them as an agency. We were treating them as an agency. Then after that, I know that Leslie and I met with Jane and Sharon and provided them some focus on what we believed which standards of conduct might be involved and what kinds of issues they might need to know to be able to make. Again, we were shooting from what we had read in the paper as being the facts, so we were saying, you know, basically worst-case scenario, these are the kind of issues that you probably need to address and these are -- which are the provisions of the standards of conduct would be applicable here. We did the same thing for RTC and Treasury actions.
Q When did the meeting with the White House folks take place?
A With these two or which meeting?
Q Well, if you could delineate, you said there was one meeting with Mr. Cutler. When did that

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occur?
A Early July.
Q Who attended that? You said yourself, the general counsel?
A And the director.
Q And who --
A Mr. Cutler -- Mr. Cutler is the only one I absolutely know for sure, but there were other bodies there, so it probably was Jane Sherburne and Sharon Conoway.
Q And anyone from any other agencies or was it just White House and OGE personnel?
A Well, Sharon Conoway was a loan, and the woman from the Navy may have been there as well. I keep saying that and I hope she's from the Navy, but I just keep thinking Pentagon. I'm thinking spatially now. I don't recall anybody else as being there, but that doesn't mean that they weren't. I don't have any notes from that meeting, either.
Q And during that meeting, you said that you discussed the support and advisory services that the OGE might be able to provide the White House?

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A Yes.
Q And could you specify what type of services you discussed that OGE might be able to provide them with?
A Well, for instance, if they would -- an agency certainly can call and say how do you read this particular standard, what is the test here, what facts do we need to have -- what's hypothetically a set of facts that would support this or support that or support something else. If an agency would call and say the following things -- an agency could call, either an agency ethics official or an IG could call and say we have the following. If the following factual -- if the following facts exist, what might apply, how might it apply, what's missing. That's the kind of thing we do every day, and we would have been able to do that as well here.
The White House counsel's office, when they reviewed Governor Sununu's travel, called and we had the same sorts of conversations then, before they issued their own report.
Q And did you provide them with support in

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their review, their internal review?
A We did answer questions for them when they would call. We did give them a written sort of list of what -- the areas they probably would have to focus on to be able to either say something did or say something didn't apply, to either say something applied or eliminate it.
Q Did you supply similar lists or advisory services to Treasury IG and RTC in their investigations?
A Yes, yes, I did. We did, yes.
Q So basically the same services, same nature?
A At that level, at the start, yes.
Q Do you know when the White House completed their review?
A No. I know --
Q Do you know if they did complete it?
A On a Thursday, which may have -- I know it was Thursday. This was a rough two weeks, but it was Thursday, it was in the afternoon and -- which if Thursday was the 21st, whatever Thursday was, it

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could be the 20th, you know, whatever, Leslie Wilcox and I went over to the White House to Lloyd Cutler's office and Jane Sherburne and Sharon -- Jane Sherburne made an oral proffer of what they had, their facts, and asked some questions about analyses, you know, were they applying certain provisions properly, et cetera.

So something had -- some mass of information was available to them by the 21st, Thursday, whatever Thursday is.

Q And what was the purpose of the meeting? Was it to get your input on the analysis or what was -- if there was an expressed purpose?

A Our purpose for attending --

Q Correct.

A -- was to provide sort of the general assistance, you know, analyses.

Q Guidance in analyses?

A Right. Our purpose was not to make an OGE determination of any kind or blessing of any kind. It was a staff-to-staff conversation.

Q What were your impressions of their

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analyses?

A Their understanding of the standards of conduct was correct.

Q Did they present you with any written materials with regard to the review that they had conducted?

A At that time, no.

Q At any time subsequent or prior to?

A We did see some written materials over the weekend.

Q And which weekend are you referring to, prior?

A The following weekend.

Q What did you see?

A We saw draft testimony -- Mr. Cutler's draft testimony.

Q Any other materials?

A No, not that I recall.

Q And of -- the draft testimony was for what testimony?

A For his testimony, I assume to the House, whoever he testified to first.

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Q So it was testimony that he hadn't given yet?
A Had not, yes.
Q Who was the draft of the testimony provided to?
A Well, Leslie Wilcox and I read it. I think she's the one who went down on the street corner and got it when somebody sent it to us.
Q Were you at the office?
A Yes.
Q Do you know who brought it over, who delivered it?
A I'm not sure whether -- I don't remember for sure. I believe it was, although I can't be certain, I believe it was Sharon who brought it over and Leslie picked it up on the street corner or they may have faxed it or something. I'm sorry, I just don't recall how.
Q That's fine. And for what purpose were you provided with Mr. Cutler's draft testimony on that Saturday?
A At the meeting at the White House, I said

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that if they were going to use OGE in their testimony, we wanted to see how our name was being used.
Q And when you say when they were going to use OGE in the testimony, what fashion were you referring to if they used it that you wanted to know about it?
A Just that. If they were going to use it, we wanted to see what they were -- how they were characterizing --
Q The context?
A Any role or what we had said to them.
Q With regard to their report, their review or with regard to --
A In Mr. Cutler's testimony.
Q Maybe I'm not understanding. You were concerned about Mr. Cutler's references to OGE in his testimony; is that correct?
A Yes, if it was going to be in his written testimony, we were concerned.
Q And you were concerned about it being used in what context?

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A We didn't know in what context he was going to use it, therefore, we simply wanted to see in what context he was going to use it.
Q I guess what I'm trying to get at is what context did you anticipate him using it in that gave you concern?
A Well, it gives us a concern every time somebody uses us in any context. I'm not trying to be --
Q I understand. I just wonder if there was a specific context.
A There's nothing in particular I was concerned about. It was just us in there at all.
Q And I guess part of the question is, were you concerned about Mr. Cutler using OGE as a reference in reference to any support that you all gave during -- when they conducted their review, their White House review?
A We wouldn't be concerned about any reference to us that was factually correct. That's all we were concerned about. So we weren't -- if you are asking me were we concerned that he would use our

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name at all, no. It was if you use it, we just want to make sure that it's in the correct context.
Q I guess I just don't understand what made you believe that he would refer to OGE in this specific testimony.
A Well, it was my impression from Jane's proffer that they had hoped to be able to do that.
Q And Jane's proffer to whom?
A To Leslie and I, when she gave the proffer of facts and their analyses, oral proffer.
Q So when you went over there on the Thursday; is that correct?
A Yes, Thursday afternoon.
Q That's when you were given the proffer?
A Yes.
Q Relating to the analysis and review that the White House conducted regarding the conduct?
A Their own staff's.
Q Correct. She had related to you that there might be a reference to OGE in Mr. Cutler's testimony?
A I certainly came away with that impression,

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because I specifically said if there would be, we wanted to see it first.

Q Did she identify what type of reference he might be making?

A I don't recall that she did.

Q Did you provide the White House with any kind of written response to your impressions of the proffer that they gave you?

A No, no.

Q Did you give them an oral response?

A We certainly had an open discussion, staff to staff, as they would go through. Like, for instance, may I have give an example?

Q Certainly.

A If they said we -- if they made sort of a blanket statement that we found no one did X, Y or Z, then I might say did you check A, did you check B, did you check C and did you check D, just as -- for them to make sure that they had covered all the bases that seemed to us they should have.

Q To make sure they properly conducted the investigation?

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A Or -- properly is not -- it's thoroughly or would have thought of the avenues or the areas that we might have thought of, because we do this all the time and they don't.

Q Did you all give them an impression that you approved of the way they had run the investigation?

A Pardon me.

Q Did you all tell them that you approved of the way they conducted the investigation?

A We didn't give any approval or disapproval of the way they had done the investigation. That wasn't really our role.

Q During that Thursday meeting at the White House where they presented you with a proffer of the I guess investigation that they conducted, were any other discussions held other than with regard to the White House investigation?

A No.

Q At any time did the office of OGE provide the White House with any documents or information with respect to the report that they were preparing

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before it was published?
A Absolutely not.
Q I believe the first meeting you referred to was a meeting with Mr. Cutler where you and Mr. Davis and Mr. Potts relayed to the White House what type of support and advisory services that OGE is able to provide?
A Yes.
Q Did Mr. Cutler at that time indicate that he would take advantage of those services?
A I believe so, yes.
Q Did he solicit any kind of advice as to how to run the type of investigation they were looking to run?
A I don't recall that he did.
Q Did Mr. Cutler make any references to any type of interviews that they would be conducting in connection with their investigation?
A I don't recall that he did.
Q Did he make any representation that they wouldn't be conducting testimony or taking interviews as a part of their investigation?

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A I don't recall that he did that, either. It was a very general meeting.
Q How long would you say it lasted?
A I don't know, but generally meetings over there don't last that long because they have too many of them, so probably no more than 45 minutes. 15 minutes, because they are late starting and then you get your hour and then you're out.
Q Did you have a prepared presentation put together for that meeting?
A No.
MS. GLYNN: Sorry.
THE WITNESS: That's all right.
BY MR. O'CALLAGHAN:
Q Was there a presentation that was given, a formal presentation, or was it in more of a discussion format?
A It was a discussion format. Actually we were asked over there so we --
Q Was it a sudden meeting or when were you contacted and when did the meeting take place?
A I really don't know. I'm sure they

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contacted the director and he said, you know, it was set up with his schedule. And my guess is it was one or two days before.

Q Did you have advance notice of the meeting?

A Probably whenever the director's secretary -- the director was trying to figure out what everybody's schedules were.

Q I was just trying to see if it came up suddenly, if you have any recollection of rushing off or --

A No, we did not rush off.

Q Did you feel you were prepared for the meeting when you went into it?

A Yes.

Q Did you bring any materials with you for the meeting or did anyone at OGE bring any materials with you?

A I might have brought a blank note pad. I don't recall anybody else bringing anything. They may have.

Q Did you take notes at the meeting?

A I did not.

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Q Did you bring the note pad with the intention to take notes?

A I generally go to these meetings with a note pad for two purposes. One, if I have to send a note to somebody, and two, if there is something that they wish us to -- somebody in any kind of a meeting, they would like to have the office provide, then I do take a list of that because I don't want to forget, but I'm not a note-taker.

Q Did anyone at the meeting take notes?

A Not to -- well, I don't know.

Q Do you recall if anybody did? Do you remember anybody scribbling or --

A I don't recall anybody from OGE doing it and I just simply -- I don't recall who may have taken notes from nonOGE participants.

Q So you don't recall whether any of the White House participants were taking notes?

A I don't.

Q Do you know if the meeting was recorded?

A I do not know that. My presumption is it was not.

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Q Other than the meeting you had with Mr. Cutler which you attended and the director and general counsel attended and the meeting that you had which involved the proffer of the investigation that had been conducted by the White House?

A Right. And the meeting, the earlier meeting in between that I mentioned that Jane Sherburne and Sharon Conoway came over to the office and Leslie and I talked to them and gave them that sort of generic outline of what were the areas of inquiry they probably ought to hit, those are the three I spoke about.

MR. PORTNOY: Can I get a fact clarified? Clarification? Fine.

I just wanted to know, you mentioned the meeting with Sherburne, I just wanted to know, at one point I thought you said it was at the White House and at another point I thought you said it was at your office. I just wanted to be clear.

THE WITNESS: There have been three meetings we were talking about. We had one meeting in -- the first one would have been in Mr. Cutler's

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office with the director and the general counsel and people from the White House.

BY MR. O'CALLAGHAN:

Q What was the date of that, just so we can --

A Early July? Sometime after Fiske said go. Okay. The second meeting would have been shortly thereafter within a few days where Sharon Conoway and Jane Sherburne came over to OGE and met with Leslie and I and we gave them that piece of paper, which is a document that you have, came out of my computer.

And the third meeting is back over in Lloyd Cutler's office but it was Jane Sherburne and Sharon Conoway and Leslie and I at the table, and I think the other woman may have come in and out. And Mr. Cutler was off over at his desk in the corner but wasn't participating in the meeting.

Q But he was present?

A He was present.

Q I'm sorry, did you say the date, that was the 21st or Thursday?

A That's Thursday afternoon.

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Q Of that week?
A Of that week.
Q Of the second to last week in July?
A That's right.
MR. PORTNOY: That would be the 21st, for clarity.
THE WITNESS: Thank you.
MR. O'CALLAGHAN: Your memory is much better than mine is.
BY MR. O'CALLAGHAN:
Q The meeting with Jane and Sharon, Jane Sherburne and Sharon Conoway, that occurred at your offices; correct?
A Yes.
Q Did they -- other than asking for -- I'm sorry. For my clarification, I apologize if I already asked you this, but could you review for me the substance of all the different discussions that occurred if there was more than one?
A The meeting in Mr. Cutler's office, all three meetings?
Q No, no, just the second one. The first one

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I think we've covered.
A Well, they wanted to get some general sense -- they were taking us up on the offer that was made.
Q The advisory services that you could provide?
A Yes, right. And they came over. We discussed the standards of conduct, particular provisions. We discussed what might be necessary to show whether a particular provision was violated or not, and we asked if they wanted and they said they did, so we gave to them just some generic areas of inquiry that they probably should -- I don't know if it's inquiries -- I don't know if that's the right word or not but just generic areas, the need to be able to say they looked at and be able to say they made a decision one way or the other.
Q Based on the information you had with regard to what they were looking at?
A Based on basically what was in the newspaper was exactly the way we started with the other two, I mean with the "other two" meaning the

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IGs of Treasury and RTC. You take the worst-case scenario, look at your standards of conduct and you go.

Q Before you did that, you had discussed possible hypotheticals; is that correct? Or if certain violations --

A Well, I said that's a method of being able to discuss a particular provision that we would engage in with any agency.

Q And do you recall what provisions were discussed?

A Use of nonpublic information -- well, I can give you some of them and I'm sure that I won't remember all of them.

Q Do your best.

A Use of nonpublic information, section on use of government records or property or impartiality. Wait a minute, I have to run through the list here. Not gifts. That's B and C. And D is financial interests. I don't think we discussed that. I didn't think even in the worst case we would see that, but we may have. Oh, we probably would

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have, preferential treatment is a subsection of our standards of conduct.

Q You discussed that?

A Yes, that would have been a possibility, I guess.

Q Well, you don't know, just for clarity?

A No, we don't know, but worst-case scenario you might find that, so you have to discuss that. If I had the standards of conduct in front of me, I could probably list them off a little bit better, but I'm drawing a blank at this point after F.

MS. GLYNN: That's essentially it.

BY MR. O'CALLAGHAN:

Q And did you identify the sections that you looked at or did they suggest to you what they were interested in?

A No, I think we identified what we perceived to be the issues.

Q Did you discuss anything else during that meeting?

A I don't think so. Such as?

Q I'm just asking you if there's anything in

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addition. Did you have any discussions about the review that was being done by OGE or any of the work being done?

A Not essential, of substance.

Q Generalities?

A At some point somebody may have asked about what was the timing, and it would have been a general answer like, well, you know, we're waiting for the stuff from the IG to roll in and then we'll get it done when we can do a professional job with it.

Q Any other discussions?

A No, we were very careful about that.

Q Were you aware that transcripts that were taken in connection with the investigation that was conducted by RTC inspector general's office and the Treasury inspector general's office were provided to Treasury before the OGE report was publicly released?

A You just asked me if they were provided to Treasury. Is that what you mean?

Q Correct, yes.

A You mean was I aware that Treasury IG provided them to Treasury somebody else?

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Q Correct.

A I don't think so. Well, wait a minute.

Q These are copies of unredacted transcripts.

A I was aware that the Treasury IG was providing some information to the Secretary. I don't -- I can't tell you now if I knew they were getting transcripts or just generic information.

Q And do you know who was receiving that information that you're aware of that was being provided to the Secretary --

A No, I don't know who was --

Q -- other than the Secretary?

A I don't know, and -- I don't know who it was being given to, no.

Q Do you know what type of information was being provided to the Secretary?

A No, I don't. I just -- some information was being given to him in anticipation of his having to do his testimony, I knew that. I just don't know what was being given to him.

Q Was this information that was being

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gathered in connection with the Treasury IG's and the RTC IG's investigation of the contacts?
A That was my presumption, yes.
Q And how were you informed of this?
A I'm sure that I found that out in a conversation with Francine Kerner.
Q And when would that have occurred?
A I couldn't -- I just don't know when that would have occurred.
Q Was it contemporaneous or was it afterward?
A After what?
Q After the information was provided.
A Oh.
Q Was it in July of 1994?
A Oh, yes. Okay.
Q I wasn't asking for a specific time of day.
A I only know Thursday afternoon. For some reason that stuck in my mind.
Q If you had been told that the inspector generals' offices were providing Treasury with copies of the transcripts before the report was publicly

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released, what would your reaction have been?
A It's my view that those transcripts were the Treasury IG's basic materials and it was his decision about what to do with those materials.
Q What do you mean by "basic materials"?
A Well, they were his basic -- they were the basic product coming out of his and the RTC's IG's -- their investigation, and it was their decision about how those materials got handled. And it was being done for the Secretary, so it was their decision, I assume, you know. It is my position, however I might have felt about it, that it was their decision about what to give and what not to give.
Q What was your understanding was -- what was the goal or the focus of the review that OGE was conducting at this time?
A We had agreed to provide the Secretary with analysis of the facts that the IGs arrived with.
Q What facts specifically -- what specific facts were they tasked out to investigate?
A Well, generically the contacts with the White House by the Treasury officials. Our analysis

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would have only been as to how the standards of conduct would have applied to those -- the activities of those employees, but it could have been broader than that, one presumes.

Q So even though it was the Secretary who had requested that the analysis be done and then subsequently the Treasury IG and RTC IG conducted investigation -- let me strike that.

You said that you had heard from Francine Kerner that the Secretary had been provided some information before the end of the review; is that correct?

A My general recollection is that yes, through her I knew that the IG was providing information to the Secretary in order to enable him to get his testimony ready.

Q Do you know when the Secretary began receiving information?

A No, I don't.

Q Did she ever tell you when she began receiving information?

A I don't recall her ever telling me that. I

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don't -- it didn't -- if she told me, it didn't stick. It didn't --

Q How did this come up in conversation with Ms. Kerner?

A I'm sure it was simply in a discussion of the Secretary's getting ready for his testimony.

Q How much contact did you have with Ms. Kerner during the July time period?

A Probably daily, and more often than not more than once a day.

Q Was she your main contact?

A At the Treasury IG's office, yes. And Pat Black was my major contact at the RTC, although I did talk to the investigators at the RTC more so than I did at Treasury.

Q Why did you talk with the RTC investigators more than Treasury?

A Well, I think there was a period of time when people started -- had other things they were pulled off to. So Pat had -- Pat Black had something else to go do, so then I would talk to -- I would talk to either Steve Switzer or Clark Blight. So if

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I couldn't get one of them and I needed to get some information to RTC or something, I had all their phone numbers.

Q And were Pat Black and Francine Kerner in charge of coordinating the investigations?

A You know, I don't know how the IG actually -- each IG actually set that up. They certainly were my major contacts.

Q And what was their relationship with you, providing information or -- what was the nature of your relationship with the two of them?

A Well, we had a very good working relationship. We got our copies of transcripts through the RTC. RTC would provide us the copies.

Q RTC would provide you with transcripts?

A Yes. I don't know how they worked it out between the two agencies about who was getting them from the service, you know, the transcript service, but I know we got our copies primarily from RTC.

When Treasury was looking at documents, I had lots of conversations with Francine Kerner, she would call up and say "do you think this document is

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relevant to a standards of conduct issue," she would sort of describe a document and I'd say either yes or no. If it was yes, it got thrown in a pot.

Q Did she generally follow your advice?

A If ever I said yes about a document, it always showed up. Just how things were going in terms of schedule, who was scheduled, what could we expect in the next day, which transcripts, that sort of thing.

Q Were you ever aware that people -- not at Treasury IG, but people at Treasury had made edits to the transcripts or materials that were later provided to OGE in preparation of your report?

A Well, people at Treasury who were -- whose transcript -- what's the word I want, the person who was having to talk, like I am now, I can't think of the word.

Q Deponent?

A Thank you.

MR. KRAVITZ: Victim.

THE WITNESS: Each deponent -- I mean, one of the things that we asked, specifically asked the

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IGs to do is we said we did not want to deal with transcripts that the deponents had not been able to look at and to check. We wanted that. So yes, as far as I know, every one of them made changes to theirs and it came in -- the changes came in all different formats, either came in a letter or they had just handwritten the changes on another copy of it. Is that what you were asking me?

BY MR. O'CALLAGHAN:

Q Well, I was asking you a general question and a more specific question is, did you ever become aware that people who were part of Secretary Bentsen's staff were making corrections or editing transcripts or materials that were provided to them by the IGs' offices?

A Well, Dennis Foreman had to edit his own. I assume you're talking about editing somebody other than your own's?

Q I'm talking about people editing material that wasn't their own.

A Are you talking -- I just want to make sure that I understand your question.

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Q Please do, yes.

A The stenographic service would provide a raw transcript and then somebody -- you're saying was I aware that somebody was then changing it, would go back to the stenographic service and get it changed and then I'd see it?

Q Maybe this will help. What type of document or draft document did RTC IG and Treasury IG provide the OGE with?

A They started providing us, probably the second week, early in the second week, their draft chronologies. Well, you mean that they produced as opposed to simple, raw transcripts?

Q Correct.

A Well, that's what we first saw was these draft chronologies coming to us, and we would take a look at those, send them back on our comments -- with our comments saying that's not our reading of this or somebody else said a different date. It was sort of a back and forth.

Q Okay.

A But it was the chronology, you know, which

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contacts occurred when.
Q Do you know -- have you ever heard that people at Treasury -- not Treasury IG -- made comments on or edits to draft chronologies that were sent to OG --
A No.
Q -- in preparation of your report?
A I did not. I never heard that or knew that.
Q Would it be proper for that to happen?
MR. PORTNOY: I just want the record to be clear whether you're asking Ms. Ley for --
MR. O'CALLAGHAN: Her personal opinion, that's fine.
MR. PORTNOY: -- personal opinion or professional ethics judgment.
BY MR. O'CALLAGHAN:
Q Personal opinion is fine.
A Did the inspector general ask them to do it?
Q Well, I'll give you a general scenario. It's whether it would be proper for the people

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conducting the investigation of the Treasury-White House contacts to give the draft chronology they were sending to OGE to produce a report on, whether it would be proper for them to give it to Treasury to edit and make comments on before it was sent up to OGE.
A I don't want to appear that I'm not answering this question, but I've been in this business long enough that generally I probably don't have enough facts to really answer that, even in a personal capacity.
Q Okay, that's fine. I'm not going to push you on it, so that's fine.
MR. KRAVITZ: I have to say, Mike, and I don't mean any -- to cast any aspersions on your question, I know it was asked in good faith, but I think it's unfair to ask witnesses to state even their personal opinions without providing them with a full explanation of what the facts are that underlie the question. We're actually probably not in a position even to do that at this point, but I think Ms. Ley's answer is appropriate. I don't think she

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should feel as if anyone thinks she's failing to answer the questions.

MR. O'CALLAGHAN: Oh, no. I didn't mean to give that impression at all. I hope I didn't.

BY MR. O'CALLAGHAN:

Q I'd like to show you an exhibit which is Bates stamp 01495, and it looks like an 8 to me. It's a one-page document dated July 29, 1994. It's a memorandum from Kenneth R. Schmalzbach from R. Peter Rittling -- Peter Rittling -- they're both Department of Treasury and the subject is review of OIG's White House -- chronology of White House.

A This is the type of activity I was referring to which discusses that the OIG incorporated many of the recommended changes in the final chronology. And it goes on to talk about what kind of activity occurred in the reviewing the OIG's final chronology.

Q My question to you is, being a member of the process and the OGE team that prepared the report, whether first -- whether you were advised that this process was going on. That's the first

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question.

A No.

Q And second, whether OGE would have approved of this process going on.

A Well, I can't speak for the office, but I can say this: They were the IG's documents, and I don't think it was -- it probably wasn't our position to approve or disapprove.

Q Okay. That's fine, thanks.

Have you ever been told that the White House provided copies of the transcripts -- unredacted copies of transcripts that were taken during the course of the investigation that was done for the OGE report?

A Provided them to whom?

Q They were provided to White House officials.

A Oh, were provided to -- yes, I was told they were.

Q When were you told that?

A The 21st is a Thursday. Whatever, like Monday or Tuesday after that following weekend, Pat

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Black told me, who was the counsel to the RTC IG, said that they had been provided transcripts.

Q And did she make a telephone call to you or how did the discussion occur?

A Well, it was in a telephone conversation. I don't know if she started the conversation or I had called her, and I don't know what all we may have discussed in the same conversation, but it certainly was a part of a conversation.

Q And what did you discuss during that conversation?

A Other than that, I couldn't tell you, but probably a number of things because we usually tried to use each telephone call because we had a hard time getting each other, but she said that they had been provided by Treasury to the White House over that weekend.

Q Did you have any reaction to that?

A Well, Pat was fairly angry about it, and I didn't express a reaction to her.

Q Did you have a reaction that you didn't express?

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A Probably, but I did not have any major reaction, other than probably rolled my eyes.

Q Why would you have rolled your eyes?

A Because -- probably because Pat had said that they had done it over their specific objections, and my concern was the two IGs were not getting -- the investigation didn't seem to be going smoothly between them at that point. There seemed to be this friction there.

Q Did Pat tell you during this conversation that they had done it over her specific objections?

A I believe so, yes.

Q Had you been aware that Ms. Black had made that objection to the White House previously?

A No, I did not.

Q You had not been informed about that?

A No.

Q Had you been aware that the White House had requested the transcripts at an earlier time?

A I knew in that Thursday meeting, the infamous Thursday meeting --

Q The White House on the 21st?

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A -- on the 21st, that I believe either Jane Sherburne or Sharon Conoway mentioned that Mr. Cutler was talking to the Treasury Department about getting transcripts.
Q And what did they say about that?
A Just that.
Q That he had been talking to him about getting transcripts?
A Right. To be very honest with you, in that meeting when they were giving this proffer of facts, I stopped them and finally said have you read the transcripts of your own White House employees.
Q What did they say?
A They said we've read some of them, when the attorneys for those White House employees had provided them. And I simply said to them that if they were conducting their own investigation of their own employees' conduct, they ought to at least read their own employees' transcripts.
Q What was their reaction to that?
A Then I think that she said Mr. Cutler was --

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Q Endeavoring to get copies of the transcripts from Treasury?
A Yes.
Q Did you have any reaction to that?
A No. Quite honestly, I thought that was a reasonable position to take, if the transcripts were going to be made public, they ought to know -- they ought to be taking into -- if they were doing an honest evaluation of the employees' conduct, they needed to know what was totally out there and available.
Q Would it have been appropriate for them to receive transcripts which contained confidential information from other agencies that didn't involve their employees?
A I suppose that would depend on the purpose the information was provided, the same analysis we went through. You can provide confidential information inside the government, but it has to be for a legitimate purpose.
Q How about if -- well, the scenario would be that -- would it be a legitimate purpose if the

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confidential information was explicitly -- there were objections made by the agency whose confidential information it was?

A Well, I think this is -- again, it's probably pretty factually driven here.

Q Well, there was confidential, unredacted information in the transcripts regarding RTC and confidential information?

MS. GLYNN: I think what Ms. Ley means is unless she knows the details of to whom they were given and for what purpose, who provided them, what specific -- what use would have been made of them, she can't really answer that question.

MR. O'CALLAGHAN: That's fine.

BY MR. O'CALLAGHAN:

Q Did anyone else other than Pat Black inform you that the White House had been provided unredacted copies of transcripts on July 23?

A I actually didn't know the date, but I'm sure that Francine Kerner and I then had a subsequent conversation.

Q Do you recall that conversation, any parts

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of it?

A Well, it may have come up in the context of the next -- she called to tell me that they were considering sending an entire set to the Hill.

Q And how did that come up?

A Francine Kerner called to say that they were going to -- that the IG was considering sending an entire set to the Senate.

Q An entire unredacted set?

A Well, that was -- she didn't say one way or another, and my response to her was, Francine, there's a lot of confidential information in there that I don't think you can send.

Q What was her reaction to that?

A I believe her reaction was she was surprised that I would say that. It was a surprise, but not a no, you're wrong or whatever. She was just surprised that I would feel that there was a problem with the transcripts.

Q Did she state why she didn't think there was a problem with the transcripts?

A No.

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Q Did she ask you why you thought there was a problem with the transcripts, other than there being confidential information in there?
A Well, that's what the reason was, because of the nonpublic information that was in there, particularly about the Madison -- the RTC employees' transcripts had a substantial amount of information about that case. "Substantial" is relative. They had information in there about that case, the resolution of the Madison Guaranty.
MR. O'CALLAGHAN: Let's take a five-minute break.
(Recess.)
BY MR. O'CALLAGHAN:
Q Back on the record. Ms. Ley, you testified earlier that you received a draft of Mr. Cutler's testimony from the White House before he testified in front of the House?
A Yes.
Q What did you do when you got the testimony? What did you do with it?
A Well, I read it.

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Q I can be more specific. I'll be more specific. Did you -- you told me earlier that you asked to review it to see if there were any references made to OGE.
A Right.
Q Were there any references made to OGE in the draft of the testimony?
A There were.
Q And what were the references made to OGE in the draft?
A Actually, I don't recall the literal language that was in the draft.
Q Did you have any objections to the references that were made in the draft to OGE?
A I believe that I commented that they should be changed to reflect more accurately what could be said.
Q What were the suggestions that you made?
A I don't recall literally what they were.
Q To whom did you suggest that the changes should be made?
A I either said that to Jane or to Sharon.

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Q To Jane Sherburne?
A Or to Sharon Conoway. I don't know who.
Q What was the substance of the references made to OGE in the draft?
A I don't recall the draft. I know that there were two in the final testimony. I think there were still two in the final testimony.
Q Were there more than that in the draft?
A There might have been three.
Q So do you know that some of your suggestions were followed?
A I believe they took them to heart, yes.
Q Do you know if they actually carried them out?
A Well, his testimony was not -- as I recall, when his final testimony came out, we didn't have any major concerns with the way our -- the OGE was referenced in there.
Q Do you remember the general subject of your suggested changes?
A I don't, but that's because I tried to make sure that people are careful with their word choices,

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like the use of the word "investigate." Not that that was in there.
Q I understand, yes.
A And calling our analysis a report, that tends to send me off occasionally. So I'm fairly careful about word choices, so I would have made very careful --
Q Just for the record, how would you characterize your analysis? What was that called, the OGE analysis?
A It was an analysis. It was --
Q If I used "report" earlier, I apologize.
A That's quite all right.
(Laughter.)
It's only the people in my own office that I really go after.
Q So we're safe?
A You're safe.
Q Do you recall whether any of the references to OGE in the draft of Mr. Cutler's testimony -- let me strike that.
Did you read the entire draft of the

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testimony that you were given, Mr. Cutler's testimony?
A I'm sure I did.
Q Were there any references to any of the material that was contained in the transcripts that were taken for the OGE analysis?
A I don't recall. Specific references?
Q Specific or general.
A I really don't recall.
Q Do you recall if Ms. Kulka was ever mentioned in the draft of the testimony? It's kind of a unique name.
A I don't.
Q You don't recall?
A I don't.
Q Do you recall whether there were any references made in the transcript or the contents of the transcripts in Mr. Cutler's actual testimony?
A You mean what he actually orally gave?
Q Correct.
A I didn't watch it.
Q Did you ever read a printed copy of it?

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A A printed --
Q Of his testimony.
A Well, I read his -- the written copy that they provide to the committee prior to his testifying.
Q Okay. And were there --
A And I may have read news reports about his testimony, and I may have seen snippets of his testimony on television, but I was busy doing other things.
Q And do you recall that he referenced any information that was in the transcripts in either his oral or his written testimony?
A I don't recall.
Q Any of the news reports?
A Of anything that I saw, no, I don't recall of anything that I saw.
Q When did you -- or, rather, did you return the transcripts back to the White House or did you communicate to them your suggested changes over the telephone or by another means?
A Probably by telephone or another means.

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Probably by telephone.
MR. PORTNOY: When you said draft transcripts, did you mean draft testimony?
BY MR. O'CALLAGHAN:
Q Draft testimony, excuse me.
A And that's what I was answering to.
Q The draft testimony?
A Yes.
Q So did you maintain a copy of the draft of the testimony?
A I believe the office may have a copy of it.
Q Do you know if that was produced to the committee?
A I don't know, but I think there is a reference in the first letter to some materials that may be referencing that.
Q Okay. And referencing in what way?
A Well, I have to tell you, I was out of the country last week, and I think the second letter was either at the end -- may have been done as I was walking out the door. So the first letter I understood had some reference to documents about

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which they had to check on executive privilege or something of that nature. That's my understanding of what was in the first letter. I didn't see the final letter that came up to the Hill.
Q Well, I would just like to request if that's -- if it's possible, if that hasn't been produced if that could be produced to the committee. And, you know, of course contingent on any privilege that the agency may assert.
A Okay. I'll take that request back to the general counsel.
Q Yes, please. Thank you.
A All right.
Q And we could also send a written request also.
A Now, if it is those documents they referenced in that letter, do you need -- I'm just trying to understand so I can tell my office. They are going to get another written request or -- I mean, I'm just trying to find out procedurally what's happening.
Q No, I understand.

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MR. O'CALLAGHAN: Do you want to discuss this on the record?
MR. KRAVITZ: We can go off the record.
MR. O'CALLAGHAN: Why don't we do that.
(Discussion off the record.)
MR. O'CALLAGHAN: I have no further questions at this time.
MR. PORTNOY: I'll be brief.
EXAMINATION
BY MR. PORTNOY:
Q Ms. Ley, my name is Jim Portnoy and I'm counsel to the Democratic staff. Also with me is Neil Kravitz, who is also counsel to the Democratic staff. And I'll just have a few questions.
When did you first learn that the Treasury Department wanted OGE's assistance?
A Very early March. Whatever the date was that Treasury made its public announcement they were asking us to do it, it was that evening I first learned. It may be the same date as the Secretary's letter, which not having in front of me, I don't know, but, say, the 1st, 2nd, 3rd. It was snowing.

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Q The letter is dated March 3. I'd show it to you, but we can do without it.
A It was snowing.
Q And how did you learn that Treasury wanted OGE's assistance?
A The deputy director came down the hall to my office to tell me that he had received a telephone call from Dennis Foreman, who was the deputy general counsel of Treasury, saying the Secretary was going to ask us to do something. The deputy director was somewhat vague about what that was going to be. And then later that evening, I received a telephone call from Dennis Foreman, who was snowed in at home. That's why I know it was snowing.
Q The deputy director is Mr. Kemp?
A Yes.
Q When did you first become familiar with the precise parameters of the analysis that the Treasury Department wanted OGE to conduct?
A Well, actually maybe we sat the parameters because we responded -- the Secretary sent us a letter asking for our assistance, and we sent a

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letter back saying what we could do, so -- or would do.

Q Did anyone at the Department of Treasury or anyone in the administration place any limits on your investigation?

A No.

Q Pardon me, on the investigation of the inspectors general which you then analyzed?

A No.

Q To your knowledge, were there any limits placed on either the investigation or your analysis?

A Not on our analysis. To my knowledge, nothing was placed on -- no limits were placed on the investigation.

Q Were there any categories of violations or wrongdoing that either the Treasury Department or anyone else in the administration asked you not to consider?

A No.

Q Did anyone in the administration or the Treasury Department at any time suggest to you what conclusions your analysis ought to reach?

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A No.

Q Shortly after the Treasury Department contacted you, did you come into contact with the independent counsel?

A I sought a meeting with their office.

Q Why did you seek a meeting with the independent counsel?

A I think at the same time or very closely in line with that, I read in the newspaper that he had subpoenaed -- I think it was, subpoenaed a number of the people who had been engaged in that, in the contacts. And I do a lot of work with the Department of Justice, and I know that you think any criminal investigation takes precedence over an administrative investigation, not that they can't happen simultaneously, but you need the person doing the criminal investigation to give his blessing, so the first thing was to talk to Mr. Fiske because we did not want to -- whatever we were doing, even though we weren't the investigators, we did not want to jeopardize anything that he was doing, so --

Q Did Mr. Fiske or his staff make a request

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of you in that regard?
A Well, we requested the meeting, and during the meeting, they made an oral request, and then we asked if we could have a letter.
Q And what was the substance of their request?
A That whatever we were going to do not occur until they had had an opportunity to look into what they wanted to look into further. That's the general gist of the conversation. I can't give you a verbatim.
Q So would it be fair to say that you contacted the independent counsel on your own volition and not at the behest of anybody in the administration or the Treasury Department?
A I think it would be very fair to say that I did that on my own volition.
Q And would it be correct to say that the independent counsel urged you to delay your investigation until he had completed at least a portion of his?
A Well, I can't say they used the word

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"urged" because they were careful to say that they couldn't stop us but it would be very nice if it didn't proceed.
Q Did OGE then make an internal decision to defer to the preferences of the independent counsel?
A Yes, but then we wrote back to Senator -- Secretary Bentsen to then say what we could do and that we had met with the independent counsel and that we weren't investigators, but we would work with the IGs.
Q Did you communicate to the Treasury Department the decision to defer the investigation?
A I believe that was part of the discussions that I had with both of the -- early discussions that I had with both of the inspectors general.
Q Do you know if that decision was conveyed to Secretary Bentsen directly by OGE?
A Yes, yes, it was part of that letter. Well, in that letter -- it speaks for itself. I'm trying to remember exactly what it says. It said we weren't investigators, I can tell you that.
Q Did anybody in the administration or the

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Treasury Department pressure you in any way with respect to your decision to defer to the independent counsel's preferences?

A No.

Q I believe you said that you had a law clerk working in connection with your analysis?

A We had a law clerk for the summer, and one of the projects that we gave him in probably June was, quite honestly, a lot of the kinds of things that were swirling around this issue and what was happening with Whitewater, et cetera. I hadn't paid all that much attention to it, so we decided to make him go through newspaper articles and give us sort of an idea what this might all be about, so that's what I made him do.

Q Was this an effort to lay the groundwork for the work you knew was coming somewhere down the road?

A Yeah. Give us some sort of a background.

Q So can this be characterized as OGE's effort to make things move as quickly as they could once the fire wall came down?

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A Well, just to give us -- not even knowing we were going to have a fire wall at that point but just to give us some idea of what this was all about, whenever Fiske got around to saying -- I mean, we certainly weren't aware of the fire wall until it actually happened, if you want to characterize it as that.

Q I believe you testified earlier that you considered this to be the Treasury Department's investigation, in a sense?

A Well, a joint investigation of the two inspectors general.

Q Is it fair to say that the principal reason that the Office of Government Ethics became involved in this matter was because the Treasury Department asked for your assistance?

A Yes, it is fair to say that.

Q The employees whose conduct you analyzed were all Treasury Department employees?

A Yes. Well, and one -- it turned out one former Treasury Department, one who had left.

Q And the actions that were to be taken or

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were not to be taken as a consequence of your analysis were entirely up to the Treasury Department?
A In our view it was the secretary's decision.
Q You were OGE's principal liaison with the actual investigators, were you not?
A Yes.
Q Are you aware of any witness that the investigators wanted to speak with that they were precluded from speaking with?
A I don't recall that there was someone they were precluded from speaking with, and I'm not -- and actually, right now, I don't recall that there was someone they -- other than some sort of nagging thing in the back of my mind, there might have been some peripherally involved person they might like to have spoken with, but I couldn't even tell you who that was.
Q Would it be fair to say that the investigators were able to speak with substantially everybody that they wanted to speak with?
A That's my understanding, yes.

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Q Was there any additional information that you personally thought was necessary to your analysis?
A There was a document I would have liked to have known whether it was still valid or not, but that did not appear in the final documentation and report and therefore we took out -- we had a section that was discussing that, discussing the document. Let me explain.
We had a copy of a document, of a delegation of authority from the former head of the RTC to people within the RTC about how to handle -- or who handles certain kinds of cases. If that delegation was still in effect, that would have had bearing on Mr. Altman's decision -- or feeling he had to recuse or not recuse.
We had asked if the investigators could find out if that delegation was still in effect and, if so, to add a copy to the report, and we asked that fairly late in the game. It didn't show up in the final report so we took out a reference to anything like that in our report, in our analysis, so that's

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the only thing that I would like to have known, that I knew might be out there.
Q With that single exception, would you say that you were provided with all the information that you needed to conduct your analysis?
A With the benefit of what's gone on since, it seems yes, I mean there has been no other document that has shown up, no other information that has shown up through anybody else's investigation, through any news people, through anything else that's indicated that we missed -- there was something missed that would have changed that analysis. So I mean, I didn't know what was out there to know what I was missing, other than that -- potentially that document, but nothing since has shown that there was anything out there.
Q Did I correctly understand you to have testified that OGE first suggested that the RTC investigator general's office should be brought in?
A Well, I think so. I mean that's my perception, that we were -- we first suggested it.
Q Do you recall why you made that suggestion?

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A Well, because the individuals at Treasury were acting as RTC employees, and there may have been some -- certainly there would have been information that had to be gained from the RTC that needed the -- you know, would be more of assistance to have the RTC official involved, RTC inspector general involved. In fact, that's really, you know, one of the real problems was that Treasury was -- that while they were acting as RTC employees, they didn't understand they were acting as RTC employees, which we said so in the analysis.
Q Did anybody at the Treasury Department raise any objections to the participation of the RTC investigator general?
A Not to my knowledge.
Q You also indicated that you met at the White House with Jane Sherburne and possibly Ms. Conoway and provided them with information, the same kind of information you would provide to any other agency that was conducting an investigation into the conduct of its employees?
A They came to our office for that meeting.

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Q I beg your pardon.
A But yes, we did.
Q I think I tried to clarify that earlier and I apparently got it wrong. Was it your view, then, that the White House inquiry into the conduct of its employees out to be treated like and considered an investigation just like any other agency would engage in?
A Well, an internal inquiry, yes, into the conduct of an agency's employees, and if there is some indication or some belief that their employees may have engaged in some misconduct, it's that agency's responsibility to do the initial investigation.
Q So you would view it as an appropriate activity for the White House to investigate the conduct of White House personnel?
A Yes.
Q And you would view that as an activity with which the Office of Government Ethics would seek to cooperate and assist?
A Yes, and I would like to say that the

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reason is that the heads of agencies are responsible for the conduct of his or her -- each employee. Each head of an agency is responsible for the conduct of his or her employees, and there are mechanisms in all agencies, they do have to look at their own employees' conduct. And the White House is no different in that regard.
Q Would you say that in connection with the White House's investigation into its employees' conduct, it was incumbent upon the people doing the investigation to try and collect as much information as they possibly could?
A I think it's incumbent to be a professional, whether you're in the White House or whether you're in some other agency, to do -- whatever job, to do it properly.
Q And would part of doing it properly mean getting as much information as you can?
A Getting all the information, getting the information you need.
Q Certainly.
A Yes.

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Q But all the information that you reasonably believe yourself to need?
A Yes.
Q Would you consider that the transcripts of the depositions conducted by the inspectors general of White House personnel to be the type of information that the White House investigators would reasonably seek in properly conducting their investigation?
A Certainly those of their own employees.
MR. O'CALLAGHAN: And you're talking about redacted, unredacted or --
MR. PORTNOY: I'm talking about either.
THE WITNESS: Well, certainly those of their own employees. It's a source of information of statements made by their own employees about their own actions, and they ought to know that.
MR. PORTNOY:
Q Would you go so far as to say that they have an obligation to seek that information in properly conducting an investigation?
A I'm not sure what comes with the word

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"obligation," but it seems to me that you'd want to be thorough. Obligation seems to have some sort of legal term to it. And what I would say, if you're trying to be thorough, you would try to find out what's out there.
Q Let me try and personalize it and remove the legality from it. If you were in the White House conducting the investigation, would that be the kind of investigation that you would seek, would the transcripts be the kind of information that you would seek?
THE WITNESS: Am I supposed to answer this? Can I answer this?
MS. GLYNN: I think you already did.
THE WITNESS: Yes, I actually told them that's what I would seek.
BY MR. PORTNOY:
Q We're getting there. Slowly.
A I'm sorry.
Q Ms. Ley, would you agree that the depositions of nonWhite House personnel might also be relevant to the White House inquiry?

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A I'm sure that they might be relevant, but --

Q And would it be reasonable and proper for an investigator to seek the deposition transcripts of nonWhite House personnel in connection with an investigation into the conduct of White House personnel?

MR. O'CALLAGHAN: Just for clarification, when you say "investigator," are you continuing the line on the White House investigator or investigator in the general sense?

MR. PORTNOY: No, I'm specifically referring to a White House investigator, an employee of the White House tasked with investigating the contacts between the White House and the Treasury employees.

THE WITNESS: I actually don't know if I can answer that. I don't know what -- because I don't know what sort of issues might be involved in getting depositions of people who are not employees of your own agency. So, I mean, there are some issues there. Getting the ones of your own agency I

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think there's a lot more agency authority to do that.

BY MR. PORTNOY:

Q But you would agree that the information contained in the transcripts of nonWhite House employees would be relevant to the investigation?

A Well, it certainly could be, some of it.

Q Could be.

A If everybody is sitting in the same room talking about the same -- but not necessarily everything.

Q Right. If, for example, the inquiry entails an alleged contact between a Treasury Department employee and a White House employee, it would be reasonable to seek the deposition testimony of both parties to that contact in order to get a complete picture, wouldn't it?

A I certainly think it would be reasonable to ask, but again, I'm down to I don't know what legal privilege attaches to the depositions.

Q But putting aside for the moment any legal restrictions that might attach to the depositions, the information itself contained in those depositions

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would certainly be relevant, wouldn't it?
A I would want any information to shed light on the conduct of my employees.
(Witness conferred with counsel.)
Q And --
A My colleague reminds me that I'm probably not competent to talk about how one conducts an investigation because we're not investigators; rightly so, she tells me that.
Q Well, distinguishing between the two parts of an investigation which are compiling the data and then analyzing it, you certainly do conduct the second half, which is analyzing data?
A Yes, yes.
Q And so would your answers be the same if my question were in analyzing the results of an investigation, would you seek all relevant information?
A Yes.
MR. O'CALLAGHAN: You're talking about in the most general sense? This has gotten kind of speculative. We kind of drifted off course here.

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MR. PORTNOY: I'm going to try and bring this back to home very quickly now.
MR. KRAVITZ: You just got some smiles from across the table. Off the record.
(Discussion off the record.)
MR. PORTNOY:
Q Back on the record.
Just to clarify and conclude, did I correctly understand your testimony to be that you urged Jane Sherburne and Sharon Conoway to seek deposition transcripts of, at a minimum, the White House personnel?
A Well, I don't know that I said "at a minimum." I said get -- you should see the transcripts of your own employees.
MR. PORTNOY: That's all I have. Thank you very much.
MR. O'CALLAGHAN: I've got a couple quick follow-ups and then I will let you go.
EXAMINATION
BY MR. O'CALLAGHAN:
Q You said that you recommended to Jane

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Sherburne and Sharon Conoway; is that right?
A Conoway.
Q You recommended that they seek the transcripts of their own employees; correct?
A Yes.
Q You didn't suggest that they seek the transcripts of anybody else?
A I didn't suggest it, no. I mean, I didn't suggest it one way or another.
Q Did they broach that subject about the possibility of getting transcripts of other people?
A They're only response was Mr. Cutler was talking to the Treasury Department people about that now, they had some from the attorneys, other employees.
Q Do you know if they had any transcripts of people other than their own employees, other than White House employees?
A I don't know. I do not know.
Q One more question. Earlier we heard testimony about people who have served as DAEOs.
A Yes.

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Q What does that stand for again?
A Designated agency ethics official.
Q Does the White House have a DAEO?
A Yes, it does.
MR. O'CALLAGHAN: I just wanted to get that on the record. I have no further questions at this time.
(Whereupon, at 5:35 p.m., the deposition was concluded.)

JANE LEY

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Carmen Bunch

Notary Public in and for the
District of Columbia

My Commission Expires MARCH 14, 1998

DEPONENT Jane Seyz

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
		Marilyn L. Flynn, Esq. Attorney Advisor	Marilyn L. Flynn, Esq. Associate General Counsel	- proper title
1		On behalf of deponent	was also present	- not personal counsel
8	12	delete comma, add "and"		clarity - two people
10	12	add "officer and" after "affairs"		clarity - more than two people
14	9	individual	individuals	I was probably mumbling - was misheard
14	14	"on"	"at"	
14	18	"that chronology"	"that the chronology"	
15	3	"format"	"analysis"	clarify meaning
16	5	"hall myself"	"hall to myself"	clarity brevity
16	16	"Probably just"	Probably he just"	misheard
18	1	"had"	"have"	misheard
19	4-7	I answered the question as if "between" in line 4 meant between OGE and those two offices. I did not serve as a liaison between the two I'G offices. They did that themselves.		
19	13	"had a"	"his"	Clarity
20	14	"of"	"uh"	Clarity
22	12	"who"	"who they"	Clarity
22	19	after "or" add "someone else in"	needs to be understood to be there for clarity	
22	20	"it"	"them"	Clarity
23	9	"woman"	"woman's name"	Clarity

DEPONENT [signature]

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
24	4	"employee's"	"employees'"	misplaced apostrophe
25	11	"make"	"make a review"	clarity
25	16	"would"	"could"	
26	8	"know"	"remember"	I probably knew them but couldn't remember then
26	13	"loan"	"loans"	I must have been mumbling
27	6-7	~~Rephrase punctuation as follows~~ say "How do you read this particular standard? What is the test here? What facts do we need to have ---- ...?		
27	10	else.	else?")	this was a series of questions
27	18	"the White"	"the Bush White"	clarity
29	3	"and Gore"	"and met with Gore"	clarity
42	11	"have, came"	"have. It came"	clarity
43	20	"office,"	"office or"	mumbling
44	21	"newspaper was"	"newspaper. It was"	clarity
45	16	"section"	"the section"	clarity
47	4	"essential of"	"essentially of"	mumbling
49	8	"know"	"remember"	clarity
50	9	"it"	"the investigation"	to properly understand sentence
59	17	"in the"	"in their"	clarity

DEPONENT Jane Sung

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
63	11	"said have"	"said, "Have "	clarity
63	12	"employees."	"employees?"	clarity
66	22	"No" more accurately should have been "I don't recall." I knew each		
69	2	"know"	"recall"	meant recall
72	17	"of"	"in"	misheard
* 76	15	"Kemp"	"Campbell"	
76	20	"sat"	"set"	typo?
81	11	"et cetera."	"et cetera,"	clarity
87	6	"out"	"ought"	typo
93	4	"counsel"	"Ms. Glynn"	so there's no confusion as to private counsel issue.

* this is not my testimony but I believe the transcriber must have misheard Mr. Partnoy.

DEPONENT Jane Ley

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
59	13-18	This is a continuance of the question		
		It is not my answer as noted.		

DEPOSITION OF ROBERT S. MUELLER III
IN RE: S. RES. 120

WEDNESDAY, OCTOBER 11, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of ROBERT S. MUELLER III, called for examination pursuant to notice of deposition, at 9:45 a.m. in Room 562 of the Dirksen Senate Office Building before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., ESQ.
Majority Chief Counsel
LANCE COLE, ESQ.
Minority Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

PAUL FISHMAN, ESQ.
U.S. Department of Justice
10th Street and Constitution Avenue, NW
Room 4114
Washington, DC 20530
On behalf of the Deponent.

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PROCEEDINGS

MR. GIUFFRA: This is a deposition conducted pursuant to Senate Resolution 120. This resolution establishes a Special Committee administered by the Banking Committee conducting an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority and other related matters.

My name is Robert Giuffra. I am the chief counsel of the Senate Banking Committee. To my right is Lance Cole, who is deputy special counsel. And Mr. Fishman, would you like to state an appearance for the record.

MR. FISHMAN: Yes. Paul Fishman, Associate Deputy Attorney General from the Department of Justice, representing Mr. Mueller only in his official capacity.

MR. GIUFFRA: Mr. Mueller, have you had a chance to read the resolution at all?

MR. MUELLER: No.

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MR. GIUFFRA: Section 1(b)2(c) of Senate Resolution 120 authorizes an investigation and public hearings into "whether the Department of Justice has improperly handled RTC criminal referrals related to Madison Guaranty Savings & Loan Association and/or Whitewater Development Corporation."

Do you understand that that will be the focus of your deposition today?

MR. MUELLER: Yes, I do.

MR. GIUFFRA: Can we go off the record for a second?

(Discussion off the record.)

MR. GIUFFRA: Mr. Mueller, how did you learn that you would be asked to testify today?

MR. MUELLER: Mr. Fishman called me.

MR. GIUFFRA: You understand this is a deposition that is being conducted in advance of public hearings that the committee is likely to hold. Those hearings will be held starting sometime in late October and there is some possibility, although no decision has been made, that you will be asked to testify.

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The procedure today is I will ask you a series of questions. You'll be testifying under oath, and Mr. Cole will have the opportunity to ask questions. If at any time you don't understand a question, please let us know and we'll rephrase it.

The stenographer will be preparing a record of the questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings, meaning that it will not be made available to the public.

The procedure that we followed in the prior round of hearings was that four days before the start of the hearings, the depositions were made available to attorneys, and you'll get a copy of it, and you can mark changes to the extent that you see errors in the transcription. You have a right to be represented by counsel. And Mr. Fishman is representing you; correct?

MR. MUELLER: Because I'm an official of the Department of Justice, I believe he is. I don't feel I need counsel, and consequently, I have no personal counsel. But Mr. Fishman is here as a

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representative of the Department of Justice. I'm back at the Department of Justice, and consequently, it's appropriate that he be here.

Let me just say one other thing in response to your introductory remarks, and that is that I have testified previously in grand jury on these matters in response to the Independent Counsel's request, as well as been interviewed by the FBI and I have not had an opportunity to review either the grand jury testimony or the FBI 302s that were done of my previous interviews.

And consequently today, I'll testify to the best of my ability, but to the extent that there may be some hopefully minor inconsistencies between what I've testified to in grand jury or in the FBI 302, I hope you will be understanding in that regard.

MR. GIUFFRA: I guess that's an understatement. The resolution specifies a series of procedures with regard to the conduct of the deposition. To the extent that anyone has any questions about those procedures, we can refer to the resolution. Counsel can object to the form of

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questions, et cetera.
Would you please swear the witness.
Whereupon,
ROBERT S. MUELLER, III
was called as a witness and, having first been duly sworn, was examined and testified as follows:
EXAMINATION
BY MR. GIUFFRA:
Q Mr. Mueller, would you please state your name for the record.
A Robert S. Mueller, M-u-e-l-l-e-r.
Q And your present business address?
A Judiciary Square, 555 Fourth Street, Washington, D.C.
Q And what is your present position?
A I'm senior litigation counsel in the homicide section of the U.S. Attorney's office.
Q And prior to becoming a senior litigation counsel in the homicide division of the U.S. Attorney's office, what office did you hold?
A I was a partner in the firm of Hale & Dorr.
Q And when did you join Hale & Dorr?

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A In January of 1993, and I joined the U.S. Attorney's office in May of 1995.
Q And prior to joining Hale & Dorr?
A Assistant attorney general, division for the criminal division of the Department of Justice.
Q When did you resign as Assistant Attorney General?
A The effective date?
Q Yes.
A I'm not certain when I sent in my resignation letter, but I believe it was January 19, 1993.
Q Until January 1993, you were acting as the Assistant Attorney General in charge of the --
A I was the Assistant Attorney General in charge of the division.
Q When did you become Assistant Attorney General in charge of the criminal division?
A I think it was September of -- approximately September of 1990. I believe that was the case.
Q Prior to becoming Assistant Attorney

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General in charge of the criminal division, what position did you hold?
A I was assistant to the Attorney General, Dick Thornburgh.
Q When did you become an assistant to Mr. Thornburgh?
A I believe it was in the spring -- approximately May of 1989.
Q Is that when you joined the Department of Justice?
A On that occasion.
Q Could you roughly describe your employment history since law school.
A Okay. I graduated from law school in 1973, went to Pillsbury, Madison & Sutro in San Francisco from '73 to '76. 1976 I went to the U.S. Attorney's office in San Francisco. Went to the civil division for a year. Then I was in the San Francisco U.S. Attorney's office as I was head of the special prosecution's unit and chief of criminal -- acting chief of criminal for a period of time until 1982.
1982, I went to the U.S. Attorney's office

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in Boston, Massachusetts as chief of criminal and was chief of criminal, Deputy United States and court-appointed United States Attorney for a period of time in that office from 1982 to approximately 1988. Those dates are approximate. And in 1988, I went to Hill & Barlow, a Boston law firm until the spring of '89.
Q And you went to law school?
A Virginia.
Q Just for the sake of completeness, I think that's the end of that.
MR. GIUFFRA: Off the record.
(Discussion off the record.)
BY MR. GIUFFRA:
Q Mr. Mueller, when did you first hear of an RTC criminal referral relating to Madison Guaranty or Whitewater Development Corporation?
A Sometime in the fall of 1992.
Q And how did you learn of this criminal referral relating to Madison and Whitewater?
A I believe through an urgent report.
Q And what is an urgent report?

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A An urgent report is a mechanism within the department by where the department hierarchy is alerted by United States attorneys around the country to sensitive matters or important matters that the department otherwise would not be alerted to.

Q Was this urgent report directed to you or to someone else in the department?

A There was a procedure. It wasn't directed to me. I usually got copies of urgent reports that fell within my bailiwick. If an urgent report came in on a civil rights matter or civil matter, I would get copies, but generally, they were directed to the hierarchy above me in the department.

Q And that would be the Deputy Attorney General and the Associate Attorney General and the Attorney General?

A Yes.

MR. GIUFFRA: Let me show you the document which we will mark as DOJ 17458. That will be continuing the procedure that we had earlier, which is have the exhibit number be the same as the Bates number of the documents. This is a document which

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says "Referral from RTC Corporation, October 7, 1992."

(DOJ Exhibit 17458 identified.)

BY MR. GIUFFRA:

Q Is this the urgent report that you were referring to?

A It looks like it. I will say it looks like it. I can't specifically today say that this is the piece of paper I looked at, and when I testify today, I want you to know that while I'll say it looks like the piece of paper, I want you to understand that I can't definitively say this is the piece of paper.

Q Did you read this urgent report?

MR. FISHMAN: You mean the whole document?

MR. GIUFFRA: Or any portion of the document.

THE WITNESS: I'm quite certain that I would have read the cover sheet, and I believe I skimmed -- I don't think I read word for word the attachment to the urgent report, but I believe that I went through it sufficiently so I had a grasp for what was in it.

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BY MR. GIUFFRA:
Q And what was your understanding of what was contained within the urgent report and the criminal referral?
A Well, the urgent report was sent to us to reflect a referral that had been made by the RTC to the U.S. Attorney in Arkansas and the fact that the nominee for President's name was listed as a witness.
Q And that's Bill Clinton?
A Bill Clinton was the factor that triggered the sending of the urgent report, making it a sensitive item.
Q Did you discuss this urgent report with anyone within the Department of Justice after reviewing it?
A I can't recall with whom -- I know I had discussions with Ira Raphaelson about it at some point in time.
Q Who was Mr. Raphaelson?
A He at that time was the counsel responsible for handling the Department of Justice's investigations on savings and loans. I'm not exactly

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certain of his title.
Q Do you recall anything about your conversation with Mr. Raphaelson?
A I don't recall a specific conversation. I know he attended a meeting that I had with Larry Potts from the Bureau and one or two other people. And I would have discussed something like this with him, because it would have fallen within his bailiwick, being a financial institution referral.
And in fact, I do not believe the urgent report itself triggered discussions, but that sometime after that urgent report had come by, something, whether it be a conversation with Ira or somebody within the Bureau, triggered the meeting that I subsequently had with Larry Potts, and the conversations I had may well have been with regard to that meeting as opposed to a conversation with the fact that the urgent report had come in. In other words, I think when the urgent report first came in, I remarked upon it, but had no conversations as a result of my having seen the urgent report.
Q What do you recall about this meeting with

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Mr. Raphaelson, if anything?
A Well, the meeting was with Larry Potts, attended by Mr. Raphaelson.
Q Was the meeting called by Mr. Potts?
A It was called by me and Mr. Potts -- probably triggered by me.
Q And why did you call the meeting? Do you have any recollection?
A I have a vague recollection of hearing that the Bureau in Arkansas had raised concerns that the investigation was not being pursued adequately by the U.S. Attorney's office and all I can recount is that -- at this point, I have this impression of having heard from somebody that was the case triggering a call from me to Potts saying we ought to get together on this.
Q Do you have any recollection as to how you might have learned that such concerns were being expressed by the FBI in Little Rock?
A It was either somebody in the FBI, Potts or somebody else or somebody else in the department. It might have been Ira. I just don't know.

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Q Was the meeting held in your office?
A It was.
Q And what can you recall about the meeting with Mr. Potts and Mr. Raphaelson?
A I can recall my intentions in holding the meeting and what I believe to be the results of the meeting. It was something like this.
There is a concern on the one hand that persons use the fact that the Clintons' name was mentioned in the referral as a basis for doing an overt investigation which would lead to publicity as a result of an overt investigation.
Q What is an overt investigation, just for the record?
A Overt investigation is one where agents go out and subpoena people. The public becomes aware there's an ongoing investigation being conducted by the FBI as opposed to covert, where you have an undercover operation or some other investigation that is totally nonpublic in the effort to further the investigation.
In a situation where you're coming up to an

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election, and I had been in several situations in the past, persons with a political bent can misuse predication for an investigation in order to affect one way or the other an election.

My concern in this case was that on the one hand, we wanted to make certain that the investigation was pursued adequate to the predication that supported the investigation. On the other hand, I wanted to make certain that nothing was done solely for purposes other than what is appropriate to the investigation.

And so when I had heard in some way, shape or form, there was some concern it was not being pursued adequately, what I discussed with Mr. Potts in determining what would be appropriate for the investigation, and my understanding as a result of that meeting was that the FBI was going to determine what was appropriate to the further investigation of the matter.

Q And that would be FBI in Washington or FBI in Little Rock?

A I think in Little Rock. My vague

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recollection is it was Little Rock that had expressed some concern about how the investigation was being pursued or not pursued.

Q And you wanted the investigation to be pursued in the manner in which it would be pursued in the ordinary course, regardless of the names of the persons who were listed as possible witnesses in the criminal referral?

A Exactly.

Q Do you recall approximately how long this meeting took?

A It wasn't -- I know it wasn't more than an hour. It was probably a half hour or something like that.

Q Did you discuss the meeting with anyone afterwards? Did you make a report, for example, to the Deputy Attorney General or the Attorney General?

A Not that I can recall. Ira was there, who was -- I don't recall discussing it with the Deputy or the Attorney General. That's not to say I may not have. I just have no recollection of it now.

Q Let me show you two documents. One we'll

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mark as FBI 1031, and I'll focus your attention on the last paragraph.

(FBI Exhibit 1031 identified.)

THE WITNESS: I've read it.

BY MR. GIUFFRA:

Q What is this document?

A It looks like an internal FBI memorandum.

Q Does the last paragraph of this document in any way refresh your recollection with regard to the meeting that you had with Mr. Potts?

A Yes and no. There's another document that I've seen, FBI document that was shown to me before, that includes a sentence in there which indicates my perspective on how it should be handled which is omitted from this paragraph.

Q Let me show you a document, we'll mark this one as FBI 523. You may be referring to page 525 of this particular document.

(FBI Exhibit 523 identified.)

THE WITNESS: The last sentence of page 3 of this document reflects the thrust of how I believed the follow-up should be handled.

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BY MR. GIUFFRA:

Q Why don't you read that into the record?

A "AG Mueller added that this matter should not be treated any differently than any other similar FIF investigation addressed by the FBI and DOJ."

Now, at this meeting, I do not believe there was discussion of the FBI doing some form of limited investigation. Rather, the FBI was to determine whether the case was being handled appropriately given the referral. The document that you gave me first here, which is -- how are you referring to them -- FBI 00001031?

Q Correct.

A That document notes that there was a subsequent meeting between Verinder and Kubic where it was determined that a limited investigation should be conducted into this matter. I did not understand that that was going to take place at the time of the meeting, and it was only after I had been shown these documents by Independent Counsel that I learned that a subsequent investigation, in the Bureau's terms, had taken place.

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Q What is a subsequent investigation?
A Well, here, apparently a decision was made to do a limited -- he uses the word -- does he use the word "subsequent"?
Q It might be called a limited investigation.
A A limited investigation in a subsequent meeting. A limited investigation was to be done.
Q And that was something -- you did not direct such an investigation be conducted?
A I don't recall directing such an investigation being conducted, and that seems to indicate that the decision was made after our meeting to conduct a limited investigation.
Q In fact, your recollection would be that you instructed the FBI to make the judgment as to what sort of an investigation should be conducted in this matter?
A What I wanted to know from the FBI, was the FBI investigation being handled appropriately. I don't think we specified whether there would be a limited investigation done. I don't think we

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formalistically described what the Bureau would do to be able to reach a conclusion as to whether the investigation was being handled appropriate to what was in the referral.
Q Do you recall attending any other meetings with regard to the handling within the Department of Justice of this RTC criminal referral relating to Madison and Whitewater Guaranty?
A No.
Q Do you recall having any other discussions with anyone at the Department of Justice with regard to this criminal referral relating to Madison and Whitewater Guaranty?
A Other than Ira Raphaelson. That's not to say I did not have. I could have had other discussions with people in the Department of Justice, but I don't recall any right now.
Q You recall having subsequent conversations with Mr. Raphaelson; correct?
A I know I talked to Ira Raphaelson because he was at the meeting. I believe I talked to him beforehand because he was at the meeting and it was

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within his bailiwick. I don't recall if I had any conversation subsequent to that meeting with him. I don't have any present recollection of any. I may well have, and probably did.

Q Why do you think you probably had subsequent conversations with Mr. Raphaelson?

A Because it would be natural after a meeting like that to say I think this is the appropriate thing to do, do you have any disagreement. It would be natural for us to talk immediately after the meeting to say okay, this is the way to do it.

Also, I was shown before by Independent Counsel a note from Larry Potts to me stapled to an internal FBI memorandum which recorded the results of its investigation, so I was alerted to what had -- what the FBI's perspective was after they had gone back to Arkansas and queried them on what should be done, and I'm quite certain I passed that on to Ira, but I have no present recollection of it.

MR. GIUFFRA: Let me show you another document which we'll mark as Department of Justice 017457. It's a two-page document -- it's a one-page

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document -- let's go off the record for a second.

(DOJ Exhibit 017457 identified.)

(Discussion off the record.)

BY MR. GIUFFRA:

Q Mr. Mueller, would you have any understanding as to what this particular document would be?

A From this document, no. It doesn't say what the attachments were.

Q Let me show you another document, which will be marked as Department of Justice 006692.

(DOJ Exhibit 006692 identified.)

BY MR. GIUFFRA:

Q Do you recall receiving the document bearing Bates numbers 006692 and the other pages and attachment which is 007051?

A I recall seeing Banks's letter, yes, which is the attachment to this document.

Q What do you recall about Mr. Banks's letter?

A I recall remarking upon it as it came through and seeing it and that's it.

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Q Do you recall taking any action after seeing Mr. Banks's letter?
A No. Actually, I think that Banks's letter -- I saw it. I recall seeing it in passing, and my response was I think we did the right thing in this case.
Q Did you discuss Mr. Banks's letter with anyone within the Department of Justice?
A I may have discussed it with Ira and I have some vague recollection of agreeing with Ira that this had been handled appropriately, that the confidentiality had been maintained, that there was nothing more for us to do.
The one thing that I was not aware of, and I didn't focus on the letter sufficiently at the time, but when I was interviewed by the Whitewater counsel, I saw the internal or some internal FBI correspondence which indicated that they were doing a preliminary investigation. When I learned that, it gave meaning to what Banks was saying here, that the FBI was conducting some investigation, because that aspect of the letter did not make sense to me when it

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came through, because I was not aware that the FBI directed a preliminary investigation be done.
Q But you did not direct that the preliminary investigation be done, to the best of your recollection?
A I don't recall that being the result of our meeting.
Q Did you ever discuss RTC referral number C0004 with the U.S. Attorney in Little Rock, Charles Banks?
A I don't recall discussing it with Banks. I have some vague recollection of talking to the assistant who had handled the prosecution of --
Q McDougal?
A McDougal, at some point in time.
Q Was that while you were in the Department of Justice?
A Certainly it would have been while I was in the Department of Justice, yes. And it would have been sometime during this period, and I don't know why I did not talk with Banks and why I had talked with him, but I have some recollection of doing it

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because I have a recollection of him saying that the prime target of the investigation, McDougal, had been prosecuted and was acquitted before and there were substantial numbers of documents that had to be reviewed, and getting a feel for him as to how much substance there was to this case and what the likelihood of an aggressive early prosecution would be from the perspective of the U.S. Attorney's office.

Q Do you recall the assistant's name?

A I don't. I thought he may have been first assistant. I have this vague recollection of being the first assistant handled the prosecution of Murtaugh before.

Q Does the name Floyd Dodson mean anything?

A Not really.

MR. FISHMAN: Off the record.

THE WITNESS: I may have mentioned Murtaugh, but it was McDougal who was the principal individual mentioned in the referral, if I recall correctly.

BY MR. GIUFFRA:

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Q Do you recall whether you contacted the assistant in Little Rock or whether the assistant contacted --

A I think I would have.

Q Do you recall why you contacted the assistant?

A I don't. And again, I have a vague recollection of this call.

Q That's based upon the fact that you were examined by the Independent Counsel's office?

A No. What I was saying before was I did not recall until before -- when the Independent Counsel showed me internal FBI documents, I did not know that the FBI had directed a preliminary investigation. This was separate.

You asked me whether I had talked to Chuck Banks. I said no, I don't recall talking to Chuck Banks on this, but I have a vague recollection of perhaps talking to the assistant who had handled the McDougal case previously and was also assigned this referral, and it may well that Chuck Banks referred me to him or I got his name from someplace, but I

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have this vague recollection of talking to him.
Q Do you recall speaking to anyone else in the Department of Justice about this criminal referral excluding Mr. Raphaelson and the assistant in Little Rock?
A And excluding the persons in the FBI?
Q And excluding the persons at the FBI.
A I don't have a specific recollection of doing so. I may have, but I don't have any recollection.
Q Do you have any recollection of speaking to the Attorney General of with regard to doing a criminal referral number 4?
A I don't.
Q Deputy Attorney General?
A I don't.
Q Did you speak to anybody in the White House about criminal referral number 4?
A I don't.
Q Do you have any knowledge whether anyone at the Department of Justice spoke to anyone at the White House with regard to criminal referral

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number 4?
A I don't have any knowledge of anyone speaking to anyone in the White House on it. To the contrary, I would be very surprised if anybody had. It was the posture of the Deputy Attorney General and the Attorney General and Ira and the hierarchy that you did not talk to the White House on matters such as this.
Q Now, you left the department on January 19, 1993. Do you recall any other communications or meetings that you had with regard to criminal referral number 4 other than those that you've testified to here today?
A Actually, now that you mention it, I know I talked to Jack Keeney about this.
Q Who is Mr. Keeney?
A He was my deputy in charge. He was the deputy in charge of public corruption and frauds -- I think he had frauds but maybe not. I know I discussed the issue with him -- I think it was after the fact for some reason -- and elicited his input as to whether or not this was the appropriate way to

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handle it, and I believe I also alerted him to the response that we only got back from the FBI.

Q This would have been in the October period?

A Yes.

Q What was the response you got back from the FBI, to the best of your recollection?

A There's a teletype that I think came from Arkansas that I'm sure you have that reported back that they had reviewed documents, I think, and determined that nothing more should be done at this time to press the investigation and a copy of that teletype -- internal FBI teletype was forwarded to me by Larry Potts, and I passed it on to Jack Keeney.

Q Let me show you a series of documents which we'll mark as Exhibit JDA 00190, 191, 192, 193, 194, 195.

(DOJ Exhibits 190 through 195 identified.)

THE WITNESS: These are the documents to which I was referring.

BY MR. GIUFFRA:

Q Why don't you briefly take us through these

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documents, what you recall about them.

MR. FISHMAN: If I could, the actual Bates numbers, these have been identified to the committee in indices and so forth, are 000500 through 505.

MR. GIUFFRA: So many investigations, so many Bates numbers.

THE WITNESS: The Bates number 000502 through 505 consist of a buck slip from Larry Potts to me dated October 19, 1992 accompanying an internal FBI teletype of -- off the record, I used to be able to tell these -- October 16, 1992. And this teletype reflects the result of a review done by the FBI office in conjunction with the U.S. Attorney's office of the referral and a determination that no further investigation was appropriate at that juncture.

And that internal teletype -- a copy of that was sent to me by Larry Potts with this buck slip in which he indicates agreement with that posture. I then passed it on to Jack Keeney with a buck slip with the Bates number 000500 dated October 23rd, which the following is in my handwriting: "JCK: FYI," the date and an M with a circle around

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it. And the balance of the handwriting on this buck slip, 00500, is in Jack Keeney's handwriting.

And he sent the buck slip as well as the -- my buck slip as well as the buck slip from Larry Potts in the internal FBI memorandum to Jerry McDowell for his information and wrote on my buck slip the following: "I don't see us as involved at this point. Bureau's position is reasonable."

Q Am I correct that was the last involvement you had with regard to the handling of criminal referral number 4?

A I believe that's the case. I'm not certain when the letter from Chuck Banks passed by my desk. That may have been afterwards, but one or the other was the last thing that I had to do with that particular referral.

MR. GIUFFRA: I don't have any further questions.

MR. COLE: I think I only have a few questions, but would you like to take a break?

THE WITNESS: No, I'm fine.

EXAMINATION

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BY MR. COLE:

Q Mr. Mueller, if I could, I'd like to show you a document that's marked FBI 00001062 and ask you if you've seen that document before and if you can identify the handwriting on it.

(FBI Exhibit 1062 identified.)

THE WITNESS: I've never seen it before this day, and I don't recognize the handwriting.

BY MR. COLE:

Q You will note that I believe the fourth or fifth entry on that is an entry that's headed in the margin 10/8/92 and describes a meeting among FBI officials and DOJ officials. Does this appear to describe the meeting that you previously testified to that was intended by yourself and Mr. Raphaelson?

A Yes.

Q And I noted in reviewing this document that Mr. Potts's name is not mentioned here. Is it your best recollection that Mr. Potts did attend that meeting?

A Yes, he did.

Q Notwithstanding the fact that his name is

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not shown here, you believe this is a reference to that meeting?

A Yes.

Q And if I could show you another document, which I believe Mr. Giuffra previously showed you, numbered 0523 through 0525, which is the internal FBI memorandum, the last page of that document, 525, shows a list of copy designees, which appear to be the same persons listed in the document I just showed you, 1062.

Are those the persons who attended the meeting other than Mr. Potts?

A It may well be, but I can't say for certain. I believe Mr. Verinder was there, because I know Fred. I'm not certain if I know Mr. Kubic, Mr. Dick or Mr. Kendrick. They may have been there. I may have been introduced to them, but I don't know. I know for a fact that Ira was there. I absolutely believe that Larry was there. I may be wrong on that, but I have a recollection of Potts being there.

Q That was why I was showing you the

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documents, to determine if this was the meeting that you described and if Mr. Potts was, in fact, present. And it's your best recollection that he was present?

A It's possible he wasn't there, but I know my dealings were with him and my best recollection is that he was.

Q What was Mr. Potts's position at that time inside the Bureau?

A Chief, criminal division.

Q I think you already answered this question, but let me ask you in any event. Can you identify the persons here and what their positions were inside the Bureau?

A The only one I can identify is Mr. Verinder, and he was, I believe at that time, white collar crime deputy to Mr. Potts.

Q And the other individuals listed there you do not know?

A I may know them, but right now I can't recollect whether they were there at the meeting or not, and I don't know what positions they may have

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had in the Bureau.
Q My point in asking the questions is not to test your memory, but to try to understand what role the various people played at the meeting and why they attended?
A I wish I could be more helpful to you.
Q Perhaps I've exhausted your recollection.
Did anyone other than yourself and Mr. Raphaelson attend the meeting?
A From Justice?
Q From Justice.
A I don't believe so.
Q And Mr. Keeney did not attend the meeting?
A He did not.
Q Had you discussed the matter with Mr. Keeney up to the time of this meeting?
A I don't believe so because I had this recollection of believing that I wished I had prior to the meeting.
Q He would have been your deputy responsible for this area; is that correct?
A I'm not certain -- in fact, I do not

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believe frauds fell under his bailiwick. But Jack Keeney has been at the department since Browning was Attorney General. He has been through every upheaval, political -- period of political turmoil at the department and has a good sense of what is appropriate to the circumstances, and consequently, because of his experience in this, I had my own ideas as to what should be done.
But quite often, I would use him as a sounding board even though maybe it came within the fraud section in this particular instance. Nonetheless, he was the person I would go to for his input. I may disagree with him, but I would at least elicit his input, which is why, I think, I probably sent the buck slip which is 00500 to him with the results of the FBI investigation and this leads me to believe that sometime after the meeting I did talk to him about it, and this was this buck slip that followed.
Q I think we can stipulate for the record that Mr. Keeney's reputation is well known. In fact, that's why I asked the question. It was the kind of

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meeting that I expected a career official like him would attend, but it's your recollection he did not attend?

A He did not, and your gut reaction would have been good to have him there probably is accurate, although you had the career FBI agents there, so I would be less concerned about there being the perception of the political appointees being involved as opposed to the career than otherwise.

Q Was Mr. Raphaelson a career official or political appointee at that time?

A At that time, I think he was a political appointee, but both he and I had been throughout career prosecutors basically, although we were at that point in time political appointees.

Q And a final question on this. Again, it's not a memory test, but Mr. Kendrick, with the FBI, from the documents, it appears that he was in the FBI director's office. Perhaps I should find a document here that demonstrates that. Do you recall what his role was at the meeting?

A No, I don't, and I don't recall a

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Mr. Kendrick.

MR. COLE: If we can go off the record, I'll try to find a document.

(Discussion off the record.)

BY MR. COLE:

Q Mr. Mueller, again, document 523 through 525, which is a memorandum, indicates it's from the director of FBI to FBI/Little Rock dated October 9, 1992, and the final page, as I read it with some abbreviations, it says "Little Rock is requested to submit results of this limited investigation and anticipated investigative and prosecutive plans by COB" which I assume means close of business, "10/16/92 to FBI headquarters." There are some acronyms there I don't recognize. "Attention SSA Kevin B. Kendrick."

Would that indicate that Mr. Kendrick is in the director's office?

A No, it wouldn't. I think all teletypes go from the director of the FBI to the field. I may be wrong on that, but I think it's standard internal FBI jargon to have it go from the director. I am

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somewhat certain -- and it would be surprising to me that Kendrick would be the recipient of the anticipated investigative and prosecutive plans, being in the director's office. I think he would be in the white collar crime section, but I just don't know. I don't recall.

Q The date that's referenced, 10/16/92, do you recall that being discussed at the meeting that you previously testified to?

A No, I don't.

Q And do you know why a date would have been set of one week to complete that investigation?

A I don't. I don't recall any details of what specifically the Bureau would do being discussed at the meeting, whether it be conduct a preliminary investigation or set a time frame within such time the preliminary investigation should be conducted. I don't recall that at all. The thrust of the meeting was that this should be handled no differently than one handles others. They should be handled appropriately.

Q And whose responsibility was it to make the

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determination as to what the next step should be?

A Well, I think it would be a matter discussed both by the FBI, but I would not expect the FBI to make it unilaterally. Since we had the meeting, I would expect that Larry Potts would call, and we would discuss it. If they came back and said for instance, the referral was inadequate, that our review discloses that the Clintons should be targets of this investigation, then I would think that there would be some discussion with how the investigation should proceed.

Q So am I understanding your testimony correctly that the Bureau -- you and Mr. Raphaelson were asking the Bureau to review the matter and make an initial determination and report back to the Justice Department?

A Yes.

Q And to whom were they to report?

A You used the word "report" in the form of a -- sort of chain of command. I had a very collegial relationship with Larry Potts. He had been up at ASAC in Boston when I was up there in the U.S.

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Attorney's office there, and we had been through a number of things together and whenever there was a problem, we talked to each other.

I fully expected that Potts would get back to me and say okay, this is where we are, as opposed to him reporting to me, which he did not, but we would try to resolve problems together.

Q What was Mr. Raphaelson's role?

A Mr. Raphaelson was responsible for the Department of Justice's program directed at the prosecution of those responsible for the savings and loan debacle and recovering the moneys that had been lost as a result of that debacle.

And consequently -- that was the mandate of Congress, that the position be established, and his mandate was to review and assure that referrals relating to savings and loans were handled appropriately. That meant that they had sufficient staffing, that they weren't put on the back burner, and that each U.S. Attorney's office or task force was handling the inventory of savings and loans referrals quickly, expeditiously.

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Q Do you know if Mr. Raphaelson was aware of the criminal referral on Madison Savings before you discussed it at the meeting that you've testified to?

A Oh, yes, I think he was.

Q And do you know how he came to be aware of it?

A I'm not certain, but I would imagine that he got a copy of the urgent report. It may show him as a referent on it. Alternatively, if that went to the Attorney General, because it related to savings and loans, it would have found its way to him. I know he had some sort of discussion before the meeting. I know he didn't come to the meeting cold.

Q The urgent report that you testified to, I believe, is the document that Mr. Giuffra previously showed you that's dated October 7, 1992?

A Yes.

Q So that would have been the date before the meeting that you've testified to; correct?

A I'm not certain the date of the meeting. Was it October 8th?

Q The chronology I showed you and the FBI

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teletypes showed October 8th.
A I guess I have some belief that we were aware of the referral before it came up as an urgent report. I don't know how we might have been aware.
Q Let me show you a document, what I showed you previously, appears to be a draft chronology bearing FBI 1062, and there's a handwritten entry that reads "9/22/92, E-mail to Verinder from Kubic re: Ira hears rumbling on case."
(FBI Exhibit 1062 identified.)
BY MR. COLE:
Q Does that help you recall at all about what Mr. Raphaelson may have known about the matter?
A It does not -- I know I've talked to Ira before our meeting, and it seems to me it was not just the day before. In other words, I don't have the recollection of receiving the urgent report and setting up a meeting for the next day. I think I had heard of the referral prior to at least a day -- a couple days prior to the meeting, and as I said before, I may have heard about it from Ira.
Q Here's a document that appears to be the

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final version of the draft chronology that I just showed you bearing numbers FBI 0960 through 962.
(FBI Exhibit 0960 identified.)
BY MR. COLE:
Q There's an entry there, if I could read it into the record, "during September 1992 DOJ receives press inquiry concerning existence of an FIF investigation in which the Clintons were allegedly involved. DOJ makes inquiry of FBI headquarters regarding existence of such a matter. FBI records were negative. LR" -- which I read to be Little Rock -- "FBI was contacted by FBI headquarters and advised no investigation involving the Clintons as subjects was pending."
Do you have any recollection of the events that are memorialized in that document? And if you'd like to take a moment and read the entire document, by all means, do so.
A If I could.
MR. COLE: Perhaps we could go off the record while you do so.
(Discussion off the record.)

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BY MR. COLE:
Q Mr. Mueller, I believe when we went off the record, I had asked about the entry that states "during September 1992" and purports to describe a press inquiry to the Department of Justice. Do you have any recollection of those events?
A I do not. I know the press inquiry didn't come to me, and I'm not certain if I was aware of that inquiry. I may have been. Somebody may have said Mueller, do you know anything about this.
Q What would be the normal handling at that time in the Department of Justice, if a press inquiry had been received concerning a presidential candidate and an FIF investigation, which I assume means financial institution fraud?
A The press inquiry would have come to Paul McNulty's shop, and he would have attempted to find out more about it. The three areas to which he probably would have turned in this instance, one would have been to myself, who is head of criminal and whether I know anything about it. Alternatively, it would be to Larry McWhorten, head of the office

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for United States attorneys, and the third one would have been to Ira Raphaelson, who was in charge of the fifth program. That would have been the ordinary process.

I myself don't have any recollection of having been contacted by McNulty, but it's not to say I may not have been.
Q That was going to be my next question, so you've answered it.

I note on the document Mr. Giuffra previously showed you the urgent memorandum, it shows yourself and Mr. McNulty as having received copies. That would be consistent with what you've just described as your being the appropriate persons to be notified of this kind of matter?
A Yes.
Q But you have no recollection of speaking with Mr. McNulty about this?
A No, and Mr. McNulty's contact in my office was a guy named Bob Bucknam. He may well have been the person to whom he talked.
Q Did you talk to Mr. Bucknam about this

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referral?
A I don't have any recollection of doing so. I may have.
Q Briefly for the record, could you explain what Mr. McWhorten's role was inside the Department of Justice at that time. He's the author, for the record, of the October 7th urgent memorandum to the Attorney General, Deputy Attorney General and Associate Attorney General?
A He was the director of the executive office for the U.S. Attorneys which coordinates the activities of the various United States attorneys offices throughout the country. U.S. Attorneys themselves will tell you that it does not direct them but coordinates.
Q And you've testified at the beginning of our session here that an urgent memorandum of this nature would be used to convey to the -- I believe you said the upper hierarchy or the hierarchy of the Department of Justice a sensitive matter for any of the U.S. Attorneys across the country, and that's what this memorandum is to accomplish?

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A Yes. I should say also, though, various U.S. Attorneys offices interpret the requirements of sending urgent reports differently. And because the Attorney General's name and the Deputy Attorney General's name and the Associate Attorney General's name appear as the ultimate recipients of the memo, that does not at all mean that necessarily we got it. All of them have -- each of those individuals have aides that screen the reports to determine whether or not it's something that ought to go to the Attorney General.
Q Do you have any knowledge as to whether Mr. Barr actually received this memorandum?
A I do not.
Q You have no knowledge of any communications with Mr. Barr concerning this matter?
A I did not recollect any conversations I had with him on the matter. That is not to say I may not have. That is not to say that I could have -- no, how do I put this? I could have had conversations with him. I have no present recollection of having any.

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Q I'll show you another document that the department has produced to us that has a number 3385 -- FBI 3385, which appears to be a daily log from the director's office of the Federal Bureau of Investigation.

(FBI Exhibit 3385 identified.)

BY MR. COLE:

Q It has an entry there for $12.30 on August 31, 1992 lunch with A.C. Barr, DAG Mueller and a number of other persons. Do you recall that event?

A The other persons are the Italian minister of justice, the U.S. Ambassador Peter Secchia and somebody from the Department of State. I don't have any recollection of that particular luncheon. I can assure you that nothing of substance was discussed in the course of a luncheon. That appears to be an opportunity to entertain the Italian minister of justice.

MR. FISHMAN: Off the record.

(Discussion off the record.)

MR. FISHMAN: For the record, when the FBI -- it's my understanding that the FBI produced a

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number of documents in response to requests not from this committee, but from the House Banking Committee relating to contacts, in some instances without limitation, on subject matter between various officials of the FBI and various officials in the criminal division of the Department of Justice.

So the fact that this particular document was produced by the FBI in response to those requests, this does not necessarily mean that the department or the FBI represents that the document has anything to do with the scope of this committee's investigation.

And I understand the confusion, but in some instances, more documents were produced than necessarily related to the scope because the department could not tell from the document itself what its subject matter was.

MR. COLE: I understand that and I gathered that from reading the document, but I wanted to ask Mr. Mueller whether he had any knowledge or whether he had any reason to believe this had anything to do with the Madison Guaranty criminal referral.

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THE WITNESS: To the contrary.
MR. COLE: Thank you. If I could show you a document that's numbered FBI 0986 through 996, which appears to be an October 7, 1992 FBI teletype.
(FBI Exhibit 0986 identified.)
BY MR. COLE:
Q Have you seen that document before, Mr. Mueller -- or did you see that document on or about the time it was prepared, October 7, 1992, distinguishing from when you've subsequently been shown it in connection with other testimony?
A I have not seen this document before.
Q You've had an opportunity to review the document, Mr. Mueller, but if I could direct your attention to page 992 and ask you to read the bottom portion of that page, the sentence beginning "It is the opinion of Little Rock FBI and the United States Attorney."
A "It is the opinion of Little Rock FBI and the United States Attorney and first assistant EDAR that there is indeed insufficient evidence to suggest the Clintons had knowledge of the check-kiting

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activity conducted by McDougal or Anspaugh. The earlier mention of a campaign contribution to the gubernatorial campaign also true no nexus suggesting knowledge or involvement by the Clintons."
Q Thank you. And the reason I asked you to direct your attention to that portion, if I recall your testimony earlier correctly, you said that you had an understanding that the FBI in Little Rock had a concern that this matter wasn't receiving the attention that perhaps it should, and I don't want to put words in your mouth. I'm obviously paraphrasing your testimony.
And as I read this FBI memorandum, which is from FBI/Little Rock to FBI/Washington, it seems to state, to the contrary, that they had reviewed the matter with the U.S. Attorney and concluded that it didn't merit further attention. So if you could shed any light on what appears to me to be a discrepancy between your recollection and that document, it would be helpful.
A I cannot shed any light on it. The document does appear to indicate that the FBI was

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satisfied. As I told you at the beginning of the deposition, I had an impression, and I don't know from whence I got it, that somebody was dissatisfied with the pace that the referral would be investigated.

My impression -- let me just finish -- my impression was that it came from somebody in the FBI.

Q And do you have any recollection as to from whom you got that impression?

A I do not. The people -- as I think I indicated before, I know I talked to Ira Raphaelson about the issue before the meeting, and I know I talked to Larry Potts. I may have talked to others, but I do not recall the specifics of any conversations I had with them.

Q The document I just asked you to review is several pages long, and I've read it several times, and I realize you've only had an opportunity to read it once, but am I correct in reading this document to indicate that the FBI in Little Rock and the United States Attorney's office had done what appears to me from the document -- I won't say a thorough review,

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but a review of the referral and came to a conclusion that it did not merit further investigative action? And please take as much time as you would like to look at it because as I said, it is a several page document.

A I would disagree with that portrayal of what is in this document. This document appears to focus on the involvement of the Clintons. The referral itself did not have the Clintons as a target. It had McDougal, his wife and a woman by the name of Anspaugh as the targets of the investigation, and the focus here is whether or not they had found sufficient information to believe that the Clintons had guilty knowledge, whereas my understanding throughout was the focus of the investigation was on the McDougals and the issue was whether the investigation was being properly handled overall.

Q If I could direct your attention to the last two pages of the document which describes discussion between the FBI/Little Rock and the U.S. Attorney/Little Rock, and I don't know that it's necessary to read the entire document in the record,

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but if you look at the last page, it indicates "accordingly, Little Rock has taken no investigative action on this matter pending a prosecutive opinion from USA, EDAR. On October 7, 1992 the First Assistant United States Attorney advised the Little Rock squad supervisor the USA intended to advise the Department of Justice of this matter due to its sensitive nature."

Focusing on the first sentence that I read, does this indicate that the U.S. Attorney in Arkansas will be making a prosecutive opinion on the referral?

A Yes.

Q This was a document that was directed to Mr. Kendrick in Washington?

A White collar crime section, yes.

Q And Mr. Kendrick, at least according to the documents that we've previously shown you, attended the meeting on October 8th with you and Mr. Raphaelson, although I believe your testimony is you don't know Mr. Kendrick and don't have a recollection?

A I may know him, but I have no recollection

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of that.

Q Do you have any recollection of whether this memorandum was distributed at the meeting or discussed at the meeting?

A I don't think I've seen this memorandum before. I think this is the first time I've seen the memorandum that was raised at the meeting or shown at the meeting.

Q What I'm trying to understand, and I'm not trying to be elliptical here, is to understand that this memorandum, which indicates it's going to be reviewed by the Attorney General in Little Rock and the meeting you described transpiring in Washington where the FBI, if I understood your testimony correctly, was to take action and report back to Justice as to what investigative action should take place. Is it a matter of the left hand not knowing what the right hand was doing or --

A Let me look at this memorandum again closely.

MR. COLE: We can go off the record.

(Discussion off the record.)

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THE WITNESS: I don't recall the specific conversation that triggered the meeting that I had with Larry Potts. The best of my recollection is that somebody evinced some dissatisfaction with the pace that this matter was being reviewed. And by "matter," I don't mean solely the involvement of the Clintons as witnesses, but the matter overall. And I do not recall at the meeting this teletype which you have shown me being presented or handed around.

I cannot recall today the discussion we had as to the source of the belief that we ought to look and see whether it is being handled appropriately. All I can recall is that something along those lines triggered the meeting and we had the meeting to review the fact as to whether or not everybody was satisfied that it was being handled in the ordinary course.

BY MR. COLE:

Q Is it your recollection that the concern that triggered the meeting was a concern out of Little Rock FBI?

A That's an impression I have, but it may not

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have been. I don't have a recollection of the specific conversation with either Potts or Raphaelson or somebody else which triggered the meeting.

Q Are you testifying that it could have been Raphaelson or Potts who had a concern about whether the matter was being handled?

A Could have been. It could have come from either one of those, but as I keep saying, I have this recollection that it was somebody within the FBI who was a little bit dissatisfied with the initial reaction that the U.S. Attorney's office in Little Rock had to this referral.

Q And when you say "within the FBI," you're distinguishing between the FBI and the Justice Department?

A Yes.

Q So your understanding was that the meeting was triggered by a concern in the FBI as opposed to Justice?

A As articulated perhaps to Ira or somebody else, but you see, you have two people handling down in Little Rock. You have the U.S. Attorney's office

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and the FBI. At no point in time do I have an impression that the U.S. Attorney's office was dissatisfied with the approach that the U.S. Attorney's office was taking towards the investigation of handling the investigation.

I do have an impression that the concern came from some place on the FBI side as perhaps coming through Ira or coming through Potts or through somebody else.

Q Could the concern have been on Ira's side with what the U.S. Attorney's office in Little Rock was doing?

A Could be.

Q So that's a possibility as well?

A Yes.

Q But it's your best recollection that you called the meeting?

A Yes.

Q And do you think you called the meeting at the request of Mr. Raphaelson?

A No. I called the meeting because I was of the belief that if there was a problem, then it ought

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to be addressed. And the other thing I was concerned about is it ought to be addressed in such a way -- as expressed in the teletypes, it was handled like any other investigation.

Q And from your perspective, then, the next thing you learned about this matter and how it was being handled was the note from Larry Potts that Mr. Giuffra previously showed you attaching the FBI teletype?

A Yes.

Q And if I could show you that document again, which is Department of Justice 0500 through 0505 and ask you to look at it, can you describe what the treatment -- what you would have expected the treatment of a criminal referral to be after a teletype from the FBI of that nature had been received by your office? In other words, would there be a formal mechanism to close the matter?

A Could you repeat that question. I'm not sure I understand.

Q Yes, and perhaps it's also an issue of interpretation of the document. Because as I read

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this document, it concludes that "the U.S. Attorney in Little Rock is holding provision of a prosecutive opinion regarding those subjects," that being the McDougals and Anspaugh, "in abeyance," and I won't read the entire document, and it says "accordingly, Little Rock remains in a noninvestigative posture in this matter and will not conduct any investigation without the concurrence of the U.S. Attorney in a positive prosecutive opinion."

And my question is, it appears from the notes that transmitted that document that you sent it to Mr. Keeney and this Mr. Keeney wrote a note back "I don't see us involved at this point. Bureau's position is reasonable," and has what I assume to be Mr. Keeney's initials.

What would happen next at that point?

A U.S. Attorney's office would continue to review the case. I note at some place in one of these teletypes, they believe there was legal work to be done on the statute of limitations and other matters. I was never of the opinion that either this teletype or the previous teletype was indicating that

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the matter should be closed.

To the contrary, the matter was being addressed by the U.S. Attorney's office and the FBI. The FBI, before it expends resources on an investigation, wants to know that the resources will be expended with the possibility certainly of a prosecution down the road.

This document, if you're asking whether this would result in a declination in-house, I would say no. What it means is the U.S. Attorney's office is still reviewing the matter. There is nothing for the FBI to do right now until the U.S. Attorney completes its review.

Q And was that review complete when Mr. Banks prepared the letter that, again, Mr. Giuffra showed you earlier that was attached to the second urgent memorandum from Mr. McWhorten?

A I need to see the accompanying letter from Mr. Banks.

MR. COLE: Let's go off the record for a moment.

(Discussion off the record.)

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THE WITNESS: Could I ask the court reporter to read your question back.

(The reporter read the record as requested.)

THE WITNESS: Let me preface what I'm about to say by saying that I have not been exposed to the internal workings of the U.S. Attorney's office, whether it was a closing memo or not. I tend to believe it was not based on what you've just shown me.

What Mr. Banks is reacting towards is what he perceives to be as a press to investigate, and he interprets that as having something to do with the fact that there was an election coming up. And what he is saying is that he is not going to be pushed into an overt investigation that would not be appropriate at the time.

And I believe he says in the second to last paragraph that he would be happy to meet in the future to discuss a limited examination and possibility of proving some of the allegations regarding the McDougals and Anspaugh, leaving the door open to the fact that his office would continue

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to review the referral, but stating vehemently that he will do so in such a way that it is done in an apolitical manner. There's nothing in here that tells me that a decision was made to close the case on the referral.

MR. FISHMAN: Off the record.

(Discussion off the record.)

BY MR. COLE:

Q Do you recall what the reaction inside the Department of Justice was to Mr. Banks's letter?

A I recall only a brief conversation I think I had with Ira which said we handled this appropriately.

Q That memo was sent to the offices of the Attorney General, the Deputy Attorney General and the Associate Attorney General?

A That's correct.

Q And you testified that doesn't necessarily mean that those individuals either reviewed or received the document, but let me ask, do you have any recollection of any discussions of this letter with either Mr. Barr, Mr. Terwilliger or Mr. Budd?

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A I don't.
MR. FISHMAN: Off the record.
(Discussion off the record.)
BY MR. COLE:
Q Mr. Mueller, do you have any knowledge as to whether Mr. Raphaelson had any subsequent discussions with these individuals?
A I don't. By "these individuals," you mean Mr. Barr, Mr. Terwilliger and Mr. Budd?
MR. COLE: Yes. I think that's all I have. Do you have anything further, Bob?
MR. GIUFFRA: Just a couple questions.
EXAMINATION
BY MR. GIUFFRA:
Q Going back to this document bearing Bates numbers 17458, who would have been the author of this urgent request, McWhorten?
A Somebody in McWhorten's office.
Q He's the sender, even though his name is sort of at the top?
A He individually, I'm sure, did not draft this. Maybe he did, but it would be unlikely. It

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would be somebody who works in the executive office for U.S. Attorneys drafted it and he initialed it.
Q And again, who would have made the decision to send such an urgent request to the senior attorneys in the department?
A The U.S. Attorney's office, Banks.
Q During the period in which you were Assistant Attorney General, what was the general procedure for handling RTC criminal referrals?
A I'm not an expert in this area. Let me start with that. I know an RTC referral would go -- a copy would come to the department and undoubtedly went to the fraud section. I imagine the RTC referral, a copy went to the U.S. Attorney's office and may well have gone to the FBI, but I am not intimately familiar with the procedures.
Q Do you know whether there were any procedures to maintain the confidentiality of those referrals?
A Yes. I mean, they are internal -- I'm not certain they were stamped confidential, but all referrals, criminal referrals, whether it comes from

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the RTC or bank robbery or some other matter, is confidential.

MR. GIUFFRA: No further questions.

MR. COLE: One follow-up question, if I could.

EXAMINATION

BY MR. COLE:

Q Directing your attention back to the meeting on October 8th, between yourself, Mr. Raphaelson and representatives of the FBI, there was no representative present from either the FBI's Little Rock office or the U.S. Attorney's office in Little Rock; is that correct?

A That's correct.

Q And I realize that using the term "normal" in discussing the matters that we're using is a misnomer, but in a meeting in which a criminal referral to a Little Rock U.S. Attorney's office was being discussed and which you have a recollection of concerns perhaps coming out of the FBI, perhaps coming out of the FBI in Little Rock about the handling of that referral, was it normal Department

70

of Justice/FBI procedure not to have any representation from the offices involved in Little Rock?

A Normal --

Q Pick another word, if you have a better one.

A This was not a big issue. This was not a big issue. In retrospect, it has become a big issue. It is one of a myriad of things across your desk. In my mind, it was handled relatively quickly, and the concerns that were voiced were put to rest, and it was done in such a way that nobody, I didn't think, could accuse us of inserting any motivation beyond one of what should appropriately be done in this case.

Usually, you involved a U.S. Attorney's office or the FBI when there is a substantive decision to be made, whether you're going to -- if somebody comes in and you propose a prosecution against an individual, and somebody comes in to make a pitch that the prosecution should not go forward, you bring in the U.S. Attorney's office and the FBI

71

because it's their case.
A number of times, one would meet with the FBI or ATF or Drug Enforcement Administration about something that was happening out in the field that would be in a particular office where it was not necessary to bring in somebody because a result of the meeting was not going to adversely impact a particular case.
So that happens often. Yes, it was normal to meet -- I would meet with Potts probably four or five or six or 10 times some weeks, a great deal on matters that were happening around the country. So a meeting like this was not necessarily extraordinary, and it would not be unusual to have a meeting without representatives of either the Arkansas U.S. Attorney's office or the Arkansas FBI flying up for such a meeting.
Q Or be connected by speaker telephone, for example?
A Rarely was that done. Occasionally, that was done.
Q And do you know why it was necessary or

72

thought appropriate to have five representatives from the FBI present?
MR. GIUFFRA: That's not his testimony.
MR. COLE: The documents supplemented by his testimony indicate there were five FBI representatives there, Potts, Kendrick, Verinder and the other persons that are listed on the chronology and the cc's --
THE WITNESS: I frankly don't recall how many were there. It is not unusual for the Bureau to travel with a number in attendance of meetings.
BY MR. COLE:
Q And do you know whether Mr. Sessions, who at that time was the director of the FBI, was informed of this matter?
A I have no idea.
Q You never discussed with Mr. Potts whether he had informed --
A I may have, but I don't have any recollection now.
MR. COLE: I don't have any further questions.

(Whereupon, at 11:38 a.m., the deposition was concluded.)

ROBERT S. MUELLER, III

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Julie Baker

Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 30, 1997

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT HISTORY DATA SHEET

From: MCWHORTER, LAURENCE S., DIRECTOR, EOA
To: AG., DAG, ASG
ODO: NONE
Date Received: 10-07-92 Date Due: NONE Control #: X92100714754
Subject & Date
10-07-92 "SENSITIVE" MEMO ATTACHING A COPY OF A REFERRAL RECEIVED BY THE U.S. ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF ARKANSAS FROM THE RESOLUTION TRUST CORPORATION CONCERNING APPARENT CRIMINAL ACTIVITIES INVOLVING A SAVINGS AND LOAN ASSOCIATION.

	Referred To:	Date:		Referred To:	Date:	
(1)	OAG;	10-07-92	(5)			SPEC:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			1S
	INTERIM BY:			DATE:		OPR:
	Sig. For: NONE			Date Released:		EHZ

Remarks
CC INDICATED FOR CRM, OPC.
INFO CC: ODAG (RAPHAELSON).
(1) FOR INFORMATION.
.
LIMITED DISTRIBUTION.
(SEE EXEC. SEC. 92102115319.)

Other Remarks:

FILE: REPORTS/DOJ URGENT-SENSITIVE

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

TELETYPE

FM DIRECTOR FBI
TO FBI LITTLE ROCK (PRIORITY)

SUBJECT: JAMES B. MCDOUGAL; SUSAN H. MCDOUGAL; LISA ANSPAUGH; UNSUB(S); MADISON GUARANTY SAVINGS AND LOAN, LITTLE ROCK, ARKANSAS; FIF; OO: LITTLE ROCK

RE TELCAL FROM SSA KEVIN B. KENDRICK, FBIHQ, TO SSA STEVE IRONS, LITTLE ROCK, 10/8/92 AND TELETYPE FROM LITTLE ROCK TO THE BUREAU, 10/7/92.

As discussed in retelcall, a FIF investigation is warranted in captioned matter. Therefore, Little Rock should initiate a limited investigation aimed at determining the extent of violations as alleged in the Resolution Trust Corporation (RTC) criminal referral form dated 9/1/92.

Little Rock should obtain and review the documents referenced in the criminal referral. Little Rock should also forward copies of pertinent documents to the White-Collar Crimes Section (WCCS), Financial Institution Fraud Unit (FIFU) as expeditiously as possible. In order to protect the identities of passive investors and/or witnesses, Little Rock should not conduct any overt investigation such as witness interviews or serving of grand jury subpoenas at this time. In addition, the documents should be afforded appropriate security so as to maintain the privacy of the witnesses.

Little Rock is advised to submit results of this limited investigation by COB, 10/16/92, to FBIHQ, WCCS,FIFU, Attention: SSA Kevin B. Kendrick.

NOTE: On 9/1/92, the Little Rock Division received a criminal referral form from the RTC alleging widespread fraudulent check-kiting activity, listing Presidential Candidate Bill Clinton and his wife, Hillary, as potential witnesses. On 10/8/92, Bureau officials met with Assistant AG Robert Mueller and Special Counsel Ira Raphaelson of the DOJ. AAG Mueller advised that DOJ did not have enough information at this time to render any kind of opinion and that FBIHQ should make a determination regarding an investigative course of action. During a subsequent meeting with DAD Verinder and SC Kubic, it was determined that a limited investigation should be conducted into this matter. This teletype is to advise Little Rock of that decision.

FBI-00001031

0-93 (Rev. 01/25/91)

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

155

TRANSMIT VIA:
☒ Teletype

PRECEDENCE:
☐ Immediate
☒ Priority
☐ Routine

CLASSIFICATION:
☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☒ UNCLAS

DATE: 10/9/92

^PAGE 1 OF 2

FM DIRECTOR FBI

TO FBI LITTLE ROCK/PRIORITY/(29A-LR-2459)

BT

UNCLAS

CITE: //0624//

SUBJECT: JAMES B. MCDOUGAL; SUSAN H. MCDOUGAL; LISA MSPAUGH; UNSUB(S); MADISON GUARANTY SAVINGS AND LOAN, LITTLE ROCK, ARKANSAS; FIF; 00: LITTLE ROCK.

RE TELCAL FROM SSA KEVIN B. KENDRICK, FBIHQ, TO SSA STEVE IRONS, LITTLE ROCK, 10/8/92, AND TELETYPE FROM LITTLE ROCK TO THE BUREAU, 10/7/92.

AS DISCUSSED IN RETELCALL, AN FIF INVESTIGATION IS WARRANTED IN CAPTIONED MATTER. THEREFORE, LITTLE ROCK SHOULD INITIATE A LIMITED INVESTIGATION AIMED AT DETERMINING THE EXTENT OF

29A-LR-2459-3

FOR COMM CENTER USE ONLY

NOTE: Copy Designations Are On The Last Page Of This Teletype!!!

Approved By

MRI/JUL 1135/283

Transmitted 2323 OCT 9 1992

ISN 043

FBI-00000523

FD-93A (Rev. 01/25/91)

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

^PAGE 2 UNCLAS

VIOLATIONS AS ALLEGED IN THE RESOLUTION TRUST CORPORATION (RTC) CRIMINAL REFERRAL FORM, DATED 9/1/92.

LITTLE ROCK SHOULD OBTAIN FROM THE UNITED STATES ATTORNEY AND REVIEW THE DOCUMENTS REFERENCED IN THE CRIMINAL REFERRAL. IN ORDER TO PROTECT THE IDENTITIES OF PASSIVE INVESTORS AND/OR WITNESSES, LITTLE ROCK SHOULD NOT CONDUCT ANY OVERT INVESTIGATION SUCH AS WITNESS INTERVIEWS OR SERVING OF GRAND JURY SUBPOENAS AT THIS TIME. IN ADDITION, THE DOCUMENTS SHOULD BE AFFORDED APPROPRIATE SECURITY SO AS TO MAINTAIN THE PRIVACY OF THE WITNESSES.

LITTLE ROCK IS REQUESTED TO SUBMIT RESULTS OF THIS LIMITED INVESTIGATION AND ANTICIPATED INVESTIGATIVE AND PROSECUTIVE PLANS BY COB, 10/16/92, TO FBIHQ, WCCS, FIFU, ATTENTION: SSA KEVIN B. KENDRICK.

BT

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FBI-00000524

0-93B (Rev 01/31/91)

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

PAGE 3

ADMINISTRATIVE NOTE/TICKLER COUNT:

ON 9/1/92, THE LITTLE ROCK DIVISION RECEIVED A CRIMINAL REFERRAL FORM FROM THE RTC ALLEGING WIDESPREAD FRAUDULENT CHECK-KITING ACTIVITY, LISTING PRESIDENTIAL CANDIDATE BILL CLINTON AND HIS WIFE, HILLARY, AS POTENTIAL WITNESSES. ON 10/8/92, BUREAU OFFICIALS MET WITH ASSISTANT AG ROBERT MUELLER AND SPECIAL COUNSEL, IRA RAPHAELSON, OF THE DOJ. AAG MUELLER ADVISED THAT DOJ DID NOT HAVE ENOUGH INFORMATION AT THIS TIME TO RENDER ANY KIND OF OPINION AND THAT FBIHQ SHOULD MAKE A DETERMINATION REGARDING AN INVESTIGATIVE COURSE OF ACTION. AAG MUELLER ADDED THAT THIS MATTER SHOULD NOT BE TREATED ANY DIFFERENTLY THAN ANY OTHER SIMILAR FIF INVESTIGATION ADDRESSED BY THE FBI AND DOJ.

Drafted By: KBK:amp Room/TL #: 3841/231 Phone No: 5455

COPY DESIGNATIONS:

1 - MR. VERINDER

1 - MR. KUBIC

1 - MR. DICK

1 - MR. KENDRICK

FBI-00000525

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT HISTORY DATA SHEET

From: MCWHORTER, LAURENCE S., DIRECTOR, EOA
To: AG., DAG, ASG ODD: NONE
Date Received: 10-20-92 Date Due: NONE Control #: X92102115319
Subject & Date
10-20-92 "SENSITIVE" MEMO PROVIDING AN UPDATE TO A PREVIOUS URGENT REPORT REGARDING A REFERRAL FROM THE RESOLUTION TRUST CORPORATION (RTC); WITH ATTACHMENT.
.
SEE EXEC. SEC. 92100714754 - CONTROL SHEET ATTACHED.

	Referred To:	Date:		Referred To:	Date:	
(1)	OAG;	10-21-92	(5)			SPEC:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			1S
	INTERIM BY:			DATE:		OPR:
	Sig. For: NONE			Date Released:		MAU

Remarks
CC INDICATED FOR CRM & OPC.
INFO CC: ODAG (RAPHAELSON).
(1) FOR INFORMATION.
.
LIMITED DISTRIBUTION.

Other Remarks:

10/21/92 JRH: FYI
FILE: REPORTS/DOJ URGENT-SENSITIVE

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

OCT 20 1992

Referral from the Resolution Trust Corporation

(Initialed) L S M

William P. Barr
Attorney General

George J. Terwilliger, III
Deputy Attorney General

Wayne A. Budd
Associate Attorney General

Laurence S. McWhorter
Director
Executive Office for
United States Attorneys

Designation: Criminal Matter

Security Classification: Sensitive

Originating Unit: Office of the United States Attorney
Eastern District of Arkansas
Little Rock, Arkansas 72203

Clarification and Follow-up: Charles A. Banks
United States Attorney
Eastern District of Arkansas
Little Rock, Arkansas 72203
FTS: (501) 324-5263

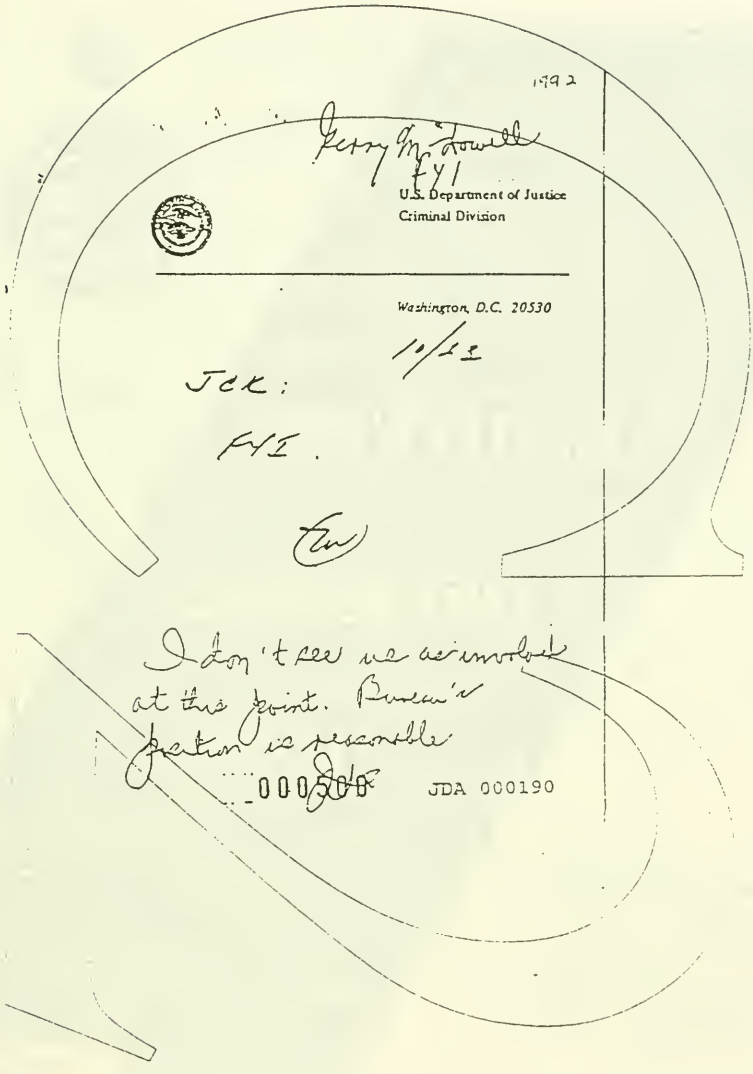
Attorneys in Main Justice Familiar with the Matter: none

Synopsis: This is an update to the previous Urgent Report dated October 7, 1992 (copy attached). Also attached is a copy of a letter from United States Attorney Charles A. Banks, Eastern District of Arkansas, to Don Pettus, Special Agent-in-Charge, Federal Bureau of Investigation, regarding a referral from the Resolution Trust Corporation. The referral involves Governor Bill Clinton and his wife Hillary Clinton who are listed as witnesses and may have information regarding suspected criminal activities by Madison Guaranty Savings & Loan.

Attachments

cc: Robert S. Mueller, III
Assistant Attorney General
Criminal Division

Paul McNulty
Director
Office of Policy and
Communications



1992

Jerry M. Powell
FYI

U.S. Department of Justice
Criminal Division

Washington, D.C. 20530

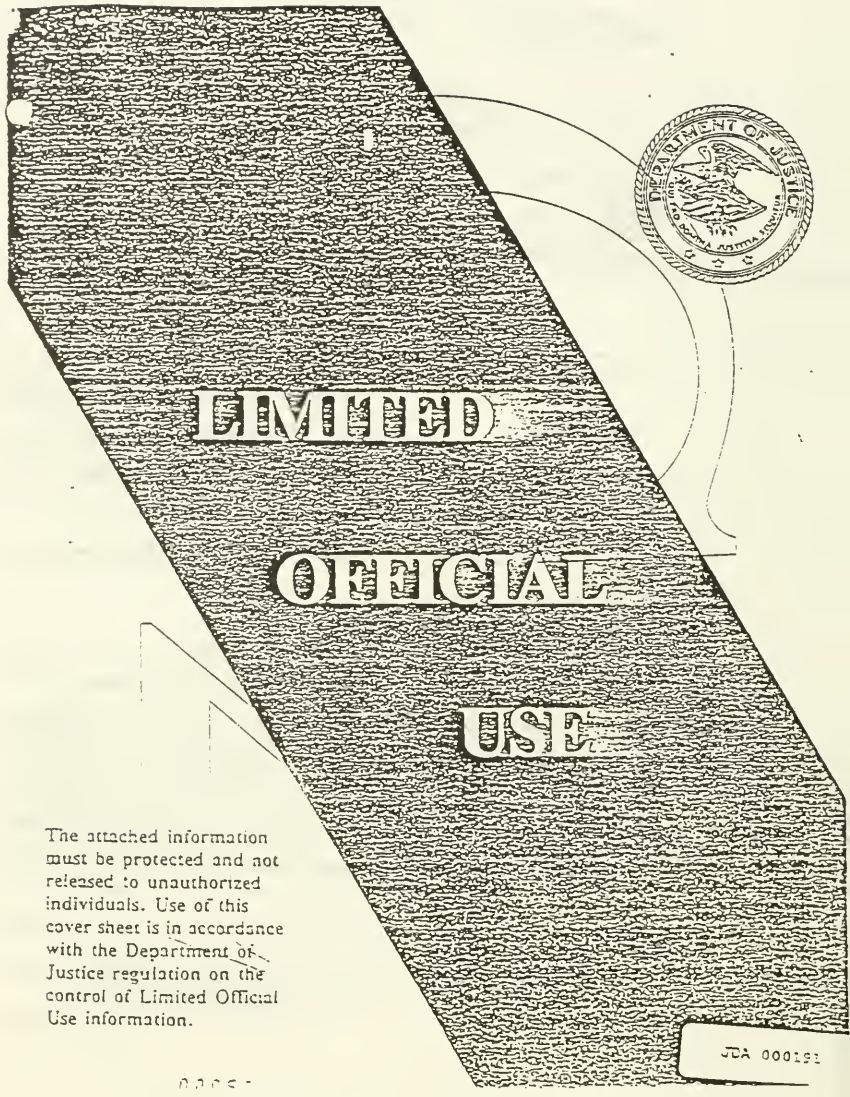
10/22

JCK:

FYI.

I don't see we are involved at this point. Bureau's position is reasonable

000508 JDA 000190


LIMITED
OFFICIAL
USE
The attached information must be protected and not released to unauthorized individuals. Use of this cover sheet is in accordance with the Department of Justice regulation on the control of Limited Official Use information.
JDA 000191

U.S. Department of Justice
Federal Bureau of Investigation
Criminal Investigative Division

Office of the Assistant Director

10/19/42

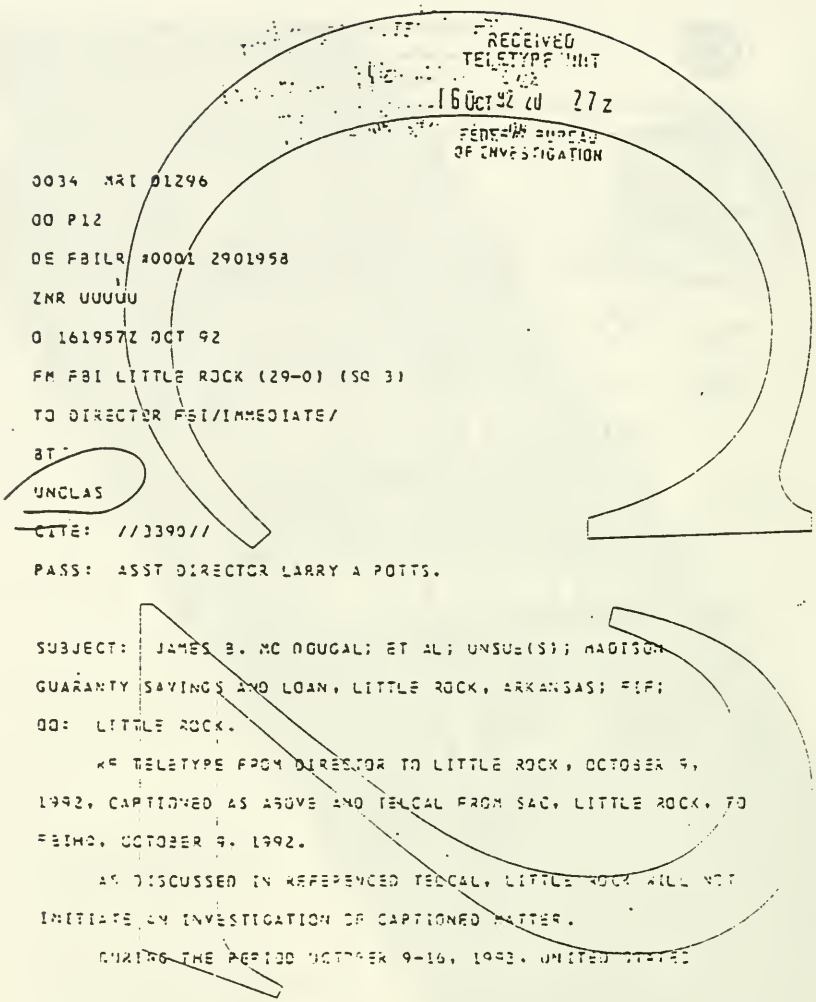
Bob:

Here is a ~~teletype~~ re the McDougal case in Little Rock. I have discussed with the SAC and agree with the contents of this teletype ie no investigation is justified at this time.

Jimmy

000502

JDA 000192



0034 MRI 01296

OO P12

DE FBILR #0001 2901958

ZNR UUUUU

O 161957Z OCT 92

FM FBI LITTLE ROCK (29-0) (SQ 3)

TO DIRECTOR FBI/IMMEDIATE/

BT

UNCLAS

CITE: //3390//

PASS: ASST DIRECTOR LARRY A POTTS.

SUBJECT: JAMES B. MC DOUGAL; ET AL; UNSUB(S); MADISON GUARANTY SAVINGS AND LOAN, LITTLE ROCK, ARKANSAS; FIF; OO: LITTLE ROCK.

RE TELETYPE FROM DIRECTOR TO LITTLE ROCK, OCTOBER 9, 1992, CAPTIONED AS ABOVE AND TELCAL FROM SAC, LITTLE ROCK, TO FBIHQ, OCTOBER 9, 1992.

AS DISCUSSED IN REFERENCED TELCAL, LITTLE ROCK WILL NOT INITIATE AN INVESTIGATION OF CAPTIONED MATTER.

DURING THE PERIOD OCTOBER 9-16, 1992, UNITED STATES

CIA 031193

PAGE TWO DE FBILR 0001 UNCLAS

ATTORNEY (USA), EASTERN DISTRICT OF ARKANSAS (EDA) AND WHITE-COLLAR CRIME SUPERVISOR AND FINANCIAL ANALYST, FBI, LITTLE ROCK, CONDUCTED AN EXTENSIVE REVIEW OF THE REFERRAL AND ALL OF THE APPROXIMATELY 300 EXHIBITS FURNISHED TO USA BY RESOLUTION TRUST CORPORATION (RTC). USA CONCURS THERE IS ABSOLUTELY NO FACTUAL BASIS TO SUGGEST CRIMINAL ACTIVITY ON THE PART OF ANY OF THE INDIVIDUALS LISTED AS WITNESSES IN THE REFERRAL. USA FEELS THE LIMITED DATA FURNISHED MAY INDICATE CRIMINAL ACTIVITY ON THE PART OF CAPTIONED SUBJECTS, JAMES AND SUSAN MC DOUGAL, AND LISA ANSPAUGH. HOWEVER, USA IS HOLDING PROVISION OF A PROSECUTIVE OPINION REGARDING THOSE SUBJECTS IN ABEYANCE.

AS DISCUSSED IN PREVIOUS COMMUNICATIONS, JAMES MC DOUGAL WAS PREVIOUSLY INDICTED FOR FRAUD RELATED TO THE FAILURE OF MADISON GUARANTY SAVINGS AND LOAN AND ACQUITTED BY JURY. HE CURRENTLY HAS NO ASSETS TO PURSUE, IS DRAWING DISABILITY INCOME AND IS BELIEVED TO RESIDE IN A TRAILER OWNED BY A FRIEND. WHILE THE AVAILABLE FACTS INDICATE ELEMENTS OF ONE OR MORE FEDERAL VIOLATIONS MAY EXIST, USA IS CONSIDERING THE LIKELIHOOD OF PROVING SUCH VIOLATIONS AND THE MANPOWER OPPORTUNITY COST TO OTHER PRIORITY INVESTIGATIONS OF PURSUING

PAGE THREE DE FBILR 0001 UNCLAS

MC DOUGAL A SECOND TIME.

ACCORDINGLY, LITTLE ROCK REMAINS IN A NON-INVESTIGATIVE POSTURE REGARDING THIS MATTER AND WILL NOT CONDUCT ANY INVESTIGATION WITHOUT THE CONCURRENCE OF USA AND A POSITIVE PROSECUTIVE OPINION.

LITTLE ROCK DIVISION PREVIOUSLY IDENTIFIED TWO FAILED LITTLE ROCK SAVINGS AND LOANS, SAVERS SAVINGS ASSOCIATION AND FIRST SAVINGS OF ARKANSAS, TO RTC AS HAVING SIGNIFICANT CRIMINAL POTENTIAL. LOSSES SUFFERED WERE APPROXIMATELY $900 MILLION AT FIRST SAVINGS OF ARKANSAS AND $650 MILLION AT SAVERS SAVINGS. REFERRALS HAVE NOT BEEN RECEIVED FOR THESE INSTITUTIONS. IT IS NOTED THE LOSS AT MADISON GUARANTY WAS $47.7 MILLION. IT IS REQUESTED FBIHQ CONTACT RTC AND REQUEST IT EXPEDITIOUSLY ADDRESS PROVIDING REFERRALS ON SAVERS AND FIRST FEDERAL, NEITHER OF WHICH HAVE BEEN THE SUBJECT OF INVESTIGATION OR INDICTMENTS AND WHICH ARE BELIEVED TO HAVE MUCH GREATER PROSECUTIVE POTENTIAL THAN MADISON GUARANTY SAVINGS AND LOAN. THIS WILL REPEAT A REQUEST MADE BY LITTLE ROCK TO THE REGIONAL RTC OFFICE IN EARLY 1992.

BT

#0001

OCA 000105

Kendrick

CHRONOLOGY OF EVENTS IN 1992

09/27/92 - LR Ueno contact w/ RTC Lewis

9/1/92 - LR receives a criminal referral from the RTC listing Bill and Hilary Clinton as well as Susan and James McDougall. Fax copy of referral received at FBIHQ on 10/6/92.

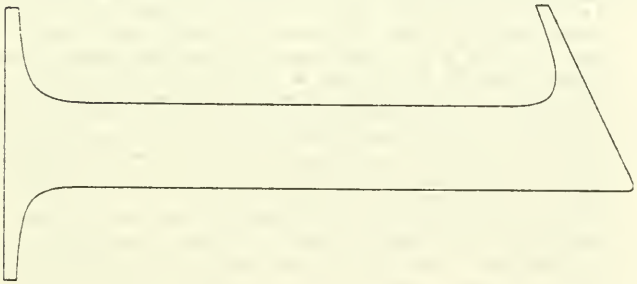
11/22/92 - E-mail to Verrender from Kubic re the Heas meeting on case.

10/7/92 - LR sends immediate teletype formally advising FBIHQ of this matter.

10/8/92 - FBIHQ officials meet with DOJ officials who advise that they do no have enough info at this point to render any kind of decision. AAG Mueller specifically states this case should be treated no differently than any other FIF investigation. (Jim Robinson, Mueller, Verrender, Kubic, Dick, Kendrick)

10/9/92 - LR instructed via teletype to open a limited investigation aimed at determining the extent of violations alleged in the CRF.

10/16/92- LR advises by teletype that an investigation will not be initiated based upon a weeklong review of this matter by the USA's office, SSA Irons, and an FA in LR. According to LR, a review of approximately 300 exhibits as furnished by the RTC failed to reveal a factual basis to suggest criminal activity on the part of any of the individuals listed as witnesses, i.e., the Clintons.



CHRONOLOGY OF EVENTS IN 1992 AND LATER

8/26/92 - RTC is contacted by Little Rock FBI in order to determine schedule for pending referrals. RTC advises that a referral on Madison Guaranty would be forwarded by 8/31/92. **(TAB A)**

9/2/92 - LR FBI receives a criminal referral without exhibits from the RTC listing Susan McDougal, James McDougal and Lisa Anspaugh as suspects in check-kiting activity. Bill and Hilary Clinton among those listed as witnesses and beneficiaries of the alleged criminal conduct. A separate referral with 300 exhibits is provided to the USAs office in LR.

During 9/92 - DOJ receives press inquiry concerning existence of an FIF investigation in which the Clintons were allegedly involved. DOJ makes inquiry of FBIHQ regarding existence of such a matter. FBIHQ records were negative. LR FBI was contacted by FBIHQ and advised no investigation involving the Clintons as subjects was pending.

10/6/92 - After conversation with FBI LR, a copy of the criminal referral from RTC referenced above was facsimilied to FBIHQ. This criminal referral form was numbered C0004. **(TAB B)**

10/7/92 - LR FBI sends immediate teletype advising FBIHQ of the receipt of a criminal referral from the regional office of the RTC concerning activity that occurred at Madison Guaranty S&L between 12/84 and 5/85. In the teletype, LR FBI advises that on 9/23/92, SAC LR and supervisory staff of the FBI met with USA to discuss this matter. It was the opinion of the USA, EDAR, that the information concerning the check kite was of possible interest with Anspaugh as a possible subject. It was also the opinion of the USA the alleged involvement of the Clintons in wrongdoing was implausible and he was not inclined to authorize an investigation or render a positive prosecution opinion. It was also noted a complete and factual determination of what transpired in any facet of the case would take some time. USA, EDAR, opined the correct course of action was for him to have legal research conducted on the statute of limitations on the various applicable bank fraud statutes and to complete an in-depth analysis of the voluminous exhibits accompanying the referral. LR FBI also advised that the First Assistant USA advised that the USA intended to advise DOJ of this matter due to its sensitivity. As of 10/7/92, LR FBI had not received the 300 exhibits that accompanied CRF C0004 and as such, could not effectively assess the CRF for criminal violations. **(TAB C)**

10/8/92 - FBIHQ officials meet with DOJ officials to discuss criminal referral C0004 from the RTC. It was agreed that this case should be treated no differently than any other FIF investigation with an initial document review.

10/9/92 - FBIHQ teletype to LR FBI advises LR to obtain the exhibits provided to the USAO and referred to in CRF C0004 in order to review them. LR FBI is also advised that in order to protect the identities of passive investors and/or witnesses, they should not conduct any overt investigation such as witness interviews or serving of grand jury subpoenas at this time. In addition, LR FBI was advised to provide the documents with appropriate security in order to maintain the privacy of the witnesses. LR FBI was requested to submit results of their review and anticipated investigative and prosecutive plans by COB, 10/16/92. **(TAB D)**

10/16/92- Letter from USA Banks, Eastern District of Arkansas to SAC Don Pettus, LR FBI, advising that while he did not intend to denigrate the work of the RTC, the initial steps in an investigation of this type, such as the issuance of grand jury subpoenas for records, would lead to media and public inquiries of matters that are subject to absolute privacy. USA Banks further stated that an investigation of this type prior to the upcoming presidential election could possibly lead to the denial of rights due to the targets, subjects, witnesses, and defendants. USA Banks did state, however, that in due time, he would be willing to discuss a limited examination and possibility of proving some of the allegations against the McDougals and Lisa Anspaugh. LR did not respond to the letter. (This letter was first observed by FBIHQ officials in 9/93 upon review of LR files in MOZARK case.) **(TAB E)**

LR advises FBIHQ by teletype that further investigation will not be conducted based upon a weeklong review of this matter by the USA's office and the LR FBI. According to LR FBI, a review of approximately 300 exhibits as furnished by the RTC, failed to reveal a factual basis to suggest criminal activity on the part of any of the individuals listed as witnesses. As mentioned in USA Banks' letter, LR advised that the limited data furnished in CRF C0004 concerning the McDougals and Lisa Anspaugh may indicate criminal activity, however, a prosecutive opinion was being held in abeyance. No overt investigation was initiated regarding the allegations in CRF C0004. **(TAB F)**

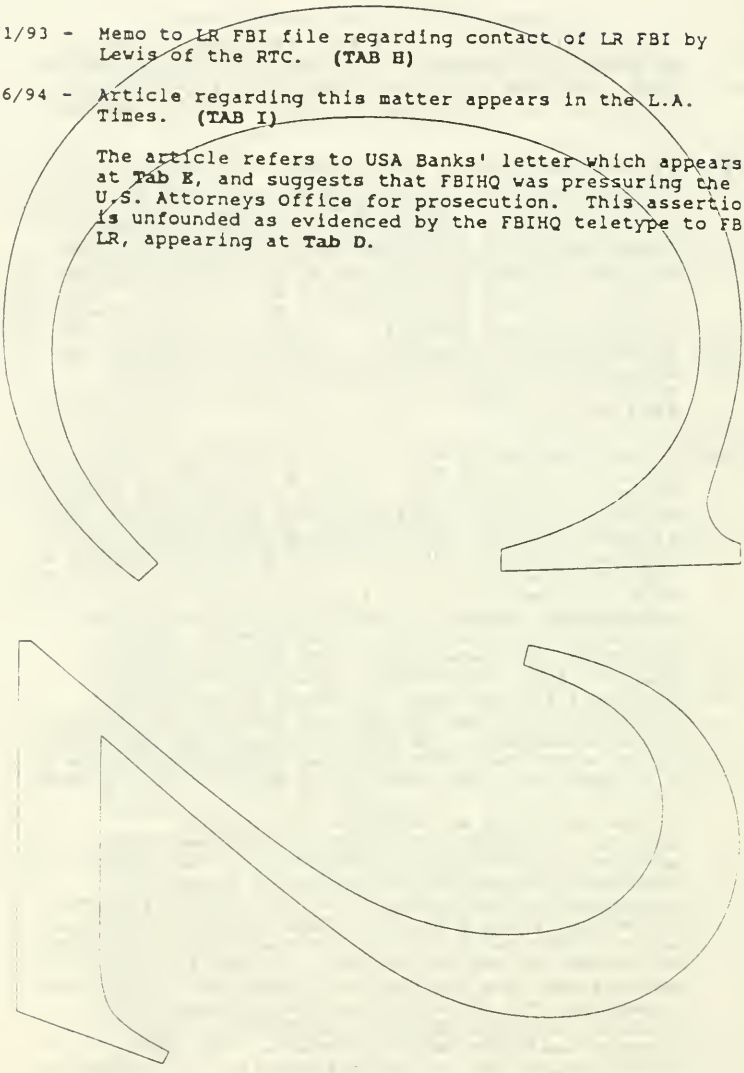
FBI-00000961

10/27/93- Letter from USAO to Jean Lewis, RTC advising that there is insufficient information in the referral to sustain many of the allegations made by the RTC investigators or to warrant the initiation of a

11/1/93 - Memo to LR FBI file regarding contact of LR FBI by Lewis of the RTC. **(TAB H)**

3/26/94 - Article regarding this matter appears in the L.A. Times. **(TAB I)**

The article refers to USA Banks' letter which appears at **Tab E**, and suggests that FBIHQ was pressuring the U.S. Attorneys Office for prosecution. This assertion is unfounded as evidenced by the FBIHQ teletype to FBI LR, appearing at **Tab D**.



DAILY LOG
DIRECTOR'S OFFICE
FEDERAL BUREAU OF INVESTIGATION

FILE Montana

DATE August 21, 1992

Time	Caller	VIA	Action	Initials
11:53	Director	T/C	spoke with Mary Kay (DAG's off)	SJC
12:30	Lunch with AG BARR, DAG Bob Mueller,			RJC
	Minister of Grace + Justice Claudio MARTELLI;			/
	Ambassador Boris Biancheri; U.S. Ambassador			/
	Peter F. Secchia And Robert Smolik Deputy Desk			/
	Director Italian Desk Department of State			/
3:57	Director (from Airplane)	T/C	spoke with John Collingwood	RJC
5:00	Director (Airplane)	T/C	spoke with Ms Lacy Potts	RJC
5:02	Director (Airplane)	T/C	spoke with John Collingwood	RJC
5:04	Director (Airplane)	T/C	spoke with Rick Staver (OLTA)	RJC
6:13	Wendy Gramm	T/C	Left word for Director	RJC
			ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 6/3/14 BY [illegible]	
9:00	Office Closed			RJC

DIRECTOR: From Quantico
IN - 11:00 OUT - 3:30
IN - OUT -
IN - OUT -
IN - OUT -
IN - OUT -

FBI/DOJ

000450

FBI-00003385

FD-36 (Rev 5-29-91)

FBI

TRANSMIT VIA:
☒ Teletype
☐ Facsimile
☐ AIRTEL

PRECEDENCE:
☒ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:
☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☒ UNCLAS

Date 10/7/92

FM FBI LITTLE ROCK (29-0)

TO DIRECTOR FBI/IMMEDIATE/

BT

UNCLAS

CITE: //0390//

PASS: WCC SECTION, FIF UNIT, SSA KEVIN KENDRICK.

SUBJECT: MADISON GUARANTY SAVINGS AND LOAN; FIF;

CO: LITTLE ROCK.

RE TELCALS FROM SSA KEVIN KENDRICK, FBIHQ, TO SSA STEVEN D. IRONS, LITTLE ROCK, OCTOBER 6 AND 7, 1992; FACSIMILE TRANSMISSION FROM SSA IRONS TO SSA KENDRICK, OCTOBER 6, 1992; AND LITTLE ROCK AIRTEL TO FBIHQ, AUGUST 26, 1992, CAPTIONED "FINANCIAL INSTITUTION FRAUD AND FAILURE MATTERS; FINANCIAL INSTITUTION REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989 (FIRREA) AND CRIME CONTROL ACT OF 1990 (CCA) RESOURCES.

SDI/sso
(1)

Approved: _____ Original filename: SSOC01W.281 (2)

Time Received: _____ Telprep filename: _____

MRI JULIAN DATE: _____ ISN _____

FBI DATE & TIME OF ACCEPTANCE _____ FBI-00000986

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THE RESOLUTION TRUST CORPORATION (RTC) PROVIDED A CRIMINAL REFERRAL FROM ITS KANSAS CITY, MISSOURI, OFFICE TO FBI, LITTLE ROCK, CONCERNING ACTIVITY THAT OCCURRED AT MADISON GUARANTY SAVINGS AND LOAN (MGSL) BETWEEN DECEMBER, 1984, AND MAY, 1985. RTC SIMULTANEOUSLY FURNISHED A COPY OF THE SAME REFERRAL TO THE UNITED STATES ATTORNEY'S OFFICE (USAO), EASTERN DISTRICT OF ARKANSAS (EDAR). THE EXHIBITS REFERENCED IN THE REFERRAL WERE PROVIDED TO THE USAO, EDAR, BY RTC AND HAVE NOT BEEN REVIEWED BY LITTLE ROCK FBI. BY REFERENCED AUGUST 26, 1992, AIRTEL, LITTLE ROCK ADVISED OF ITS ANTICIPATED RECEIPT OF THE MGSL REFERRAL, INCLUDING GENERAL DETAILS OF THE CRIMINAL ACTIVITY ALLEGED AND EXPECTED REFERENCES TO BILL AND HILLARY CLINTON AND JAMES AND SUSAN MC DOUGAL.

THE FOLLOWING INDIVIDUALS WERE IDENTIFIED IN THE REFERRAL AS PERSONS SUSPECTED OF CRIMINAL ACTIVITY:

JAMES B. MC DOUGAL

SUSAN H. MC DOUGAL (WIFE OF JAMES MC DOUGAL)

LISA ANSPAUGH

KBKOXXX029

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THE FOLLOWING PERSONS WERE IDENTIFIED BY RTC AS BEING POSSIBLE WITNESSES TO THE SUSPECTED CRIMINAL ACTIVITY:

BILL CLINTON

HILLARY RODHAM CLINTON

JIM GUY TUCKER (LIEUTENANT GOVERNOR - ARKANSAS)

STEPHEN A. SMITH

J. W. FULBRIGHT (FORMER ARKANSAS SENATOR)

GREG YOUNG

FURTHER IDENTIFIED BY RTC AS PERSONS POSSIBLY HAVING KNOWLEDGE OF VALUE TO ANY INVESTIGATION CONDUCTED WERE:

KIRBY RANDOLPH

R. D. RANDOLPH

BONNIE CROCHERON

CHARLES E. JAMES

RTC FURTHER STATES IN ITS REFERRAL THE AMOUNT OF LOSS AS A RESULT OF THE ACTIVITY FORMING THE BASIS OF THE REFERRAL IS "UNKNOWN" AND "THE ACTIVITIES IDENTIFIED AND ALLEGED WITHIN THIS REFERRAL COULD HAVE CONTRIBUTED TO THE FAILURE OF THE INSTITUTION." NONE OF THE MULTITUDE OF EVENTS DESCRIBED WAS SPECIFICALLY IDENTIFIED AS RESULTING IN A LOSS TO THE

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INSTITUTION, AND THEIR CONTRIBUTION TO THE EVENTUAL FAILURE OF MGSL IS NOT IDENTIFIED.

IN LITTLE ROCK INVESTIGATION DOCUMENTED BY FILE 29D-2549 (CLOSED), JAMES MC DOUGAL, JIM HENLEY, AND DAVID HENLEY WERE INDICTED BY A FEDERAL GRAND JURY IN THE EDAR ON NOVEMBER 20, 1989, ON VARIOUS BANK FRAUD CHARGES RELATED TO THEIR ACTIVITIES AT MGSL. JOHN LATHAM PLED GUILTY TO AN INFORMATION CHARGING HIM WITH BANK FRAUD AT MGSL ON FEBRUARY 16, 1990. TRIAL OF THE THREE INDICTED DEFENDANTS WAS HELD MAY 29, 1990, THROUGH JUNE 7, 1990. THE PRESIDING JUDGE MADE A DIRECTED VERDICT OF ACQUITTAL ON DAVID HENLEY, AND THE JURY RETURNED A VERDICT OF NOT GUILTY ON ALL COUNTS ON MC DOUGAL AND JIM HENLEY. THE GIST OF THE CASE WAS THAT MC DOUGAL ENRICHED HIMSELF THROUGH LAND "FLIPS" AND RELATED REAL ESTATE DEVELOPMENT ACTIVITIES FINANCED BY MGSL, WHICH HE EFFECTIVELY CONTROLLED.

IT IS NOTED MC DOUGAL IS DESCRIBED AS A DIAGNOSED MANIC DEPRESSIVE AND HIS PSYCHOLOGICAL STATE WAS PART OF HIS DEFENSE. IT IS ALSO NOTED LATHAM ADMITTED TO FALSIFYING INTERNAL MGSL DOCUMENTS TO DECEIVE FEDERAL EXAMINERS. IN

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ADDITION, ANOTHER POTENTIAL WITNESS IDENTIFIED BY RTC, BONNIE CROCHERON, TESTIFIED IN ANOTHER LITTLE ROCK MATTER [redacted] AS A RECORDS CUSTODIAN FOR A FINANCIAL INSTITUTION. ALTHOUGH SHE HAD NO REASON TO LIE, SHE DID SO TO A FEDERAL GRAND JURY CONCERNING HER UNEXPLAINED ALTERATION OF RECORDS REQUESTED BY THE GRAND JURY. SHE WAS NOT CHARGED DUE TO THE PERCEPTION BY THE ASSISTANT UNITED STATES ATTORNEY THAT CROCHERON WAS NOT IN FULL CONTROL OF HER ACTIONS, POSSIBLY DUE TO MENTAL IRREGULARITIES.

THE LENGTHY REFERRAL REFERS TO THE GENERAL AND SPECIFIC ASSOCIATIONS BETWEEN NUMEROUS INDIVIDUALS AND THEIR ALLEGED PARTICIPATION OR PASSIVE APPROVAL IN UNAUTHORIZED LOANS AND CHECK KITING. THE RTC REFERRAL CLEARLY INDICATES A STRONG BELIEF THE SIGNATURES ON CHECKS AND LOAN DOCUMENTS PERTINENT TO THE REFERRAL ARE BELIEVED TO BE FORGED OR "UNAUTHORIZED." IT FURTHER DESCRIBES SOME OF THE COMPANIES LISTED ON PAGE 5 AS SHELLS WHOSE ONLY ACTIVITY WAS TO SERVE AS VEHICLES FOR THE ALLEGED ILLEGAL ACTIVITY. THE ANALYSIS CITED IN THE LAST TWO PARAGRAPHS OF PAGE 5 CLEARLY INDICATES PROBABLE CHECK KITING ACTIVITY. WHILE THE REFERRAL'S STATED SUSPICION THAT THE

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ACTIVITY WAS FOR THE BENEFIT OF THE MC DOUGALS, THE FURTHER SUPPOSITION THAT OTHER PERSONS BENEFITTED DOES NOT APPEAR TO BE FACTUALLY SUPPORTED BY THE DETAILS THAT FOLLOW WITHIN THE REFERRAL. IN ADDITION TO THE ALLEGED CHECK KITING, THE MC DOUGALS ARE ALLEGED TO HAVE DIVERTED THE PROCEEDS OF THEIR MGSL HOME PURCHASE AND IMPROVEMENT LOAN. AS CHARGED IN THE TRIAL OF MC DOUGAL AND ALLEGED BY THE ACTIVITY IN THE REFERRAL, MC DOUGAL WAS LIVING FAR BEYOND HIS LEGITIMATE MEANS AND ENGAGED IN FINANCIAL IMPROPRIETIES AT MGSL AND OTHER COMPANIES IN ORDER TO FURTHER ENRICH HIMSELF AND AVOID DETECTION.

THE REFERRAL ALSO NOTES (PAGE 7) THE MGSL BOARD OF DIRECTORS WAS AWARE OF THE TOTAL MGSL OVERDRAFT SITUATION AS REFLECTED IN ITS OCTOBER, 1985, MINUTES AND VOTED TO CALL IT "AN INVESTMENT IN SERVICE CORPORATION."

THE ACTIVITIES OF MC DOUGAL AS THEY MAY HAVE INVOLVED BILL OR HILLARY CLINTON ARE RELATED TO WHITEWATER DEVELOPMENT CORPORATION, INC. (WWD). JAMES AND SUSAN MC DOUGAL AND BILL AND HILLARY CLINTON WERE THE PARTNERS IN WWD. PAGE 7, PARAGRAPH 4, AND PAGE 8, PARAGRAPHS 2 AND 3, DISCUSS THE

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CHECK-KITING ACTIVITY INVOLVING THE WWD ACCOUNT AT MGSL. THE CLINTONS ARE NOT MENTIONED AS MAKING OR ENDORSING ANY CHECKS, AND, IN FACT, IT IS ALLEGED IN THE REFERRAL THE SIGNATURE OF JAMES MC DOUGAL WAS FORGED OR SIGNED BY ANSPAUGH, OR POSSIBLY SUSAN MC DOUGAL. AS STATED IN THE LAST TWO SENTENCES OF THE REFERRAL, "ALTHOUGH CIRCUMSTANCES POINT TO THE PROBABILITY THAT SOME OR ALL OF HIS BUSINESS PARTNERS WERE AWARE OF THE ACTIVITY TAKING PLACE WITHIN THE WHITEWATER PARTNERSHIP AND CORPORATE CHECKING ACCOUNTS, THERE IS INSUFFICIENT EVIDENCE AT THIS TIME TO PROVE THAT THEY HAD KNOWLEDGE. CONSEQUENTLY, THESE INDIVIDUALS WILL APPEAR ON THE LIST OF WITNESSES CONTAINED AT THE END OF THIS REFERRAL." THE "WITNESSES" AND "BUSINESS PARTNERS" REFERRED TO ARE BILL AND HILLARY CLINTON. IT IS THE OPINION OF LITTLE ROCK FBI AND THE UNITED STATES ATTORNEY AND FIRST ASSISTANT, EDAR, THAT THERE IS INDEED INSUFFICIENT EVIDENCE TO SUGGEST THE CLINTONS HAD KNOWLEDGE OF THE CHECK-KITING ACTIVITY CONDUCTED BY MC DOUGAL OR ANSPAUGH. THE EARLIER MENTION OF A CAMPAIGN CONTRIBUTION TO THE GUBERNATORIAL CAMPAIGN ALSO DREW NO NEXUS SUGGESTING KNOWLEDGE OR INVOLVEMENT BY THE CLINTONS. AGAIN, ON PAGE 9,

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PARAGRAPH 4, OF THE REFERRAL, RTC ADVISES THERE IS NOT SUFFICIENT EVIDENCE AT THE PRESENT TIME TO PROVE KNOWLEDGE BY PERSONS LISTED AS WITNESSES IN THE REFERRAL. LITTLE ROCK NOTES KNOWLEDGE BY, OR ASSISTANCE FROM, THE LISTED WITNESSES IS NOT ONLY NOT INDICATED, IT WAS NOT NECESSARY FOR MC DOUGAL/ANSPAUGH TO ADVISE OR INCLUDE THE WITNESSES IN THE SCHEME.

BEGINNING ON PAGE 12 OF THE REFERRAL, SPECIFIC TRANSACTIONS CONCERNING WWD ARE DESCRIBED TO THE EXTENT THE NATURE WAS DISCERNIBLE FROM MGSL RECORDS BY THE RTC. AT THE BOTTOM OF PAGE 13, THE REFERRAL MAKES REFERENCE AS A "NOTE" THE ALLEGATIONS MADE IN NEWSPAPER ARTICLES CONCERNING THE PURCHASE AND SALE OF A HOUSE BY WWD ON BEHALF OF HILLARY CLINTON. THE REFERRAL RECOMMENDS A COURSE OF ACTION BY THE GOVERNMENT, I.E., THE REVIEW OF THE RECORDS OF OZARKS REALTY AND WWD TO DETERMINE IF WWD CHECK NUMBER 137, MARCH 22, 1985, WAS INVOLVED IN THE TRANSACTION. IT IS NOTED BY LITTLE ROCK THE CHECK IN QUESTION WAS ALLEGEDLY SIGNED BY ANSPAUGH IN THE NAME OF JAMES B. MC DOUGAL. THE AUTHOR OF THE REFERRAL IDENTIFIES ANSPAUGH AS THE PROBABLE SIGNER BASED ON HER OWN

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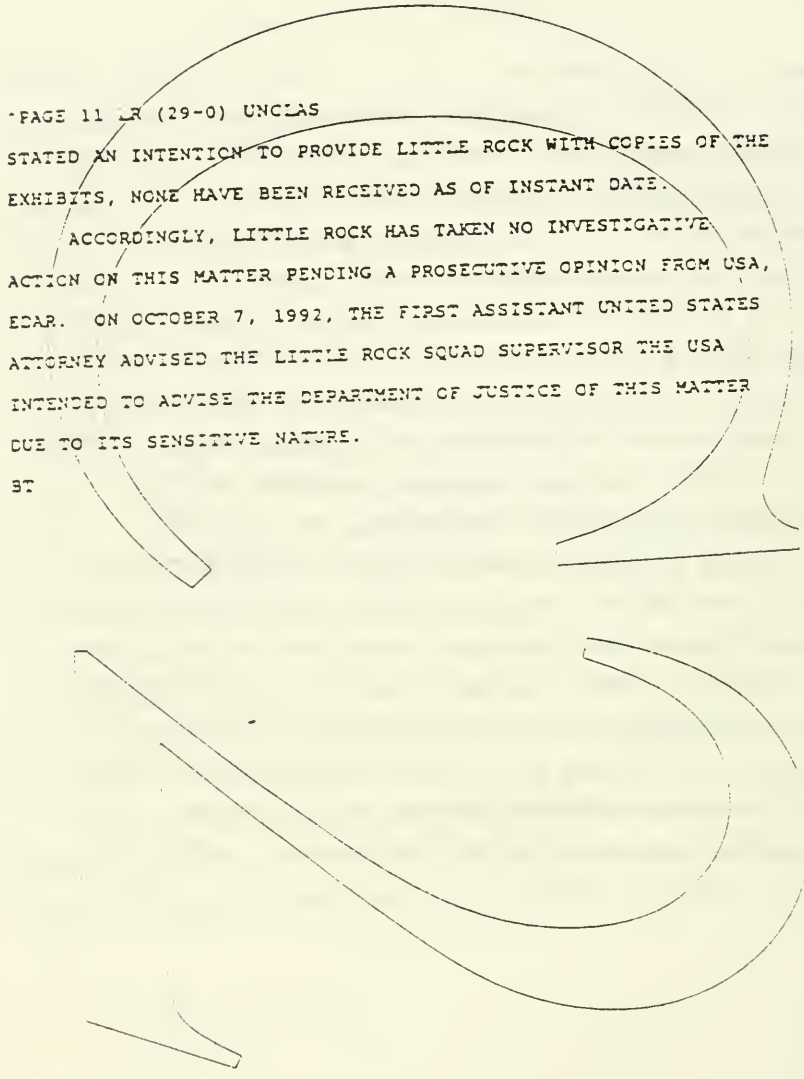
OPINION BASED ON OTHER MGSL WRITTING SAMPLES. A DEPOSIT FOR $30,000 LISTED AS BEING PROCESSED APRIL 30, 1985, TO WWD CAME FROM MADISON FINANCIAL AND APPEARS TO RELATE TO EFFORTS TO COVER PREVIOUS OVERDRAFTS IN THE WWD ACCOUNT. AT THE BOTTOM OF PAGE 18 OF THE REFERRAL, KIRBY RANDOLPH IS IDENTIFIED AS A FORMER RECEPTIONIST AT MGSL WHO RECEIVED ALL MONTHLY STATEMENTS OF ALL COMPANIES, WHICH IS UNDERSTOOD BY LITTLE ROCK TO INCLUDE WWD. THAT SITUATION, IF TRUE, FURTHER INDICATES A STRONG POSSIBILITY MC DOUGAL WAS IN CHARGE OF WWD RECORDS, JUST AS HE WAS WITH THE RECORDS OF NUMEROUS OTHER COMPANIES INVOLVED IN THE CHECK KITING, AND DOES NOT SUGGEST THE CLINTONS HAD ACCESS TO CHECKING ACCOUNT STATEMENTS THAT WOULD HAVE REFLECTED THE QUESTIONABLE TRANSACTIONS AT THE TIME. IF THE CLINTONS ARE NOW IN POSSESSION OF SUCH RECORDS AND WERE NOT AWARE OF MC DOUGAL'S PREVIOUS ACTIVITY, THEY MAY NOW BE AWARE MC DOUGAL WAS ENGAGED IN FINANCIAL TRANSACTIONS UTILIZING THE WWD ACCOUNT.

THE NEWSPAPER ARTICLES ALSO MADE A POINT OF A LETTER WRITTEN BY THE ROSE LAW FIRM IN LITTLE ROCK (HILLARY CLINTON IS A PARTNER) TO THE ARKANSAS STATE SECURITIES COMMISSION

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(ASSC), WHICH IS THE STATE ENTITY RESPONSIBLE FOR OVERSEEING FINANCIAL INSTITUTIONS. THE ARTICLE ALLEGED THE LETTER, WHICH MAY HAVE BEEN SIGNED BY HILLARY CLINTON, URGED THE COMMISSIONER OF ASSC TO NOT PURSUE AN EXAMINATION OF MGSL. THE ARTICLE IS NOT CONTAINED IN A LITTLE ROCK FILE.

ON SEPTEMBER 23, 1992, SAC, LITTLE ROCK, AND SUPERVISORY STAFF MET WITH USA TO DISCUSS THIS MATTER. IT WAS THE OPINION OF USA, EDAR, THE INFORMATION CONCERNING THE CHECK KITE WAS OF POSSIBLE INTEREST, WITH ANSPAUGH AS A POSSIBLE TARGET. IT WAS ALSO THE OPINION OF USA THE ALLEGED INVOLVEMENT OF THE CLINTONS IN WRONGDOING WAS IMPLAUSIBLE, AND HE WAS NOT INCLINED TO AUTHORIZE AN INVESTIGATION OR RENDER A POSITIVE PROSECUTION OPINION. IT WAS ALSO NOTED A COMPLETE AND FACTUAL DETERMINATION OF WHAT TRANSPIRED IN ANY FACET OF THE REFERRAL WOULD TAKE SOME TIME. USA, EDAR, OPINED THE CORRECT COURSE OF ACTION WAS FOR HIM TO HAVE LEGAL RESEARCH CONDUCTED ON THE STATUTE OF LIMITATIONS ON THE VARIOUS APPLICABLE BANK FRAUD STATUTES AND TO COMPLETE AN IN-DEPTH ANALYSIS OF THE VOLUMINOUS EXHIBITS ANCILLARY TO THE REFERRAL. ALTHOUGH HE



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STATED AN INTENTION TO PROVIDE LITTLE ROCK WITH COPIES OF THE EXHIBITS, NONE HAVE BEEN RECEIVED AS OF INSTANT DATE.

ACCORDINGLY, LITTLE ROCK HAS TAKEN NO INVESTIGATIVE ACTION ON THIS MATTER PENDING A PROSECUTIVE OPINION FROM USA, EDAR. ON OCTOBER 7, 1992, THE FIRST ASSISTANT UNITED STATES ATTORNEY ADVISED THE LITTLE ROCK SQUAD SUPERVISOR THE USA INTENDED TO ADVISE THE DEPARTMENT OF JUSTICE OF THIS MATTER DUE TO ITS SENSITIVE NATURE.

BT

DEPOSITION OF STEPHEN D. POTTS
IN RE: S. RES. 120

WEDNESDAY, OCTOBER 11, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of STEPHEN D. POTTS, called for examination pursuant to notice of deposition, at 9:40 a.m. in Room 640–A of the Hart Senate Office Building before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, ESQ.
Majority Associate Special Counsel
NEAL E. KRAVITZ, ESQ.
Minority Principal Deputy Special Counsel
JAMES S. PORTNOY, ESQ.
Minority Associate Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

GRAY DAVIS, ESQ.
U.S. Office of Government Ethics
1201 New York Avenue, NW
Suite 500
Washington, DC 20005–3917
On behalf of the Deponent.

ALSO PRESENT: CHRISTOPHER FERRO

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PROCEEDINGS

MR. O'CALLAGHAN: Mr. Potts, are you represented by counsel today?

THE WITNESS: Not personally, but the general counsel of the Office of Government Ethics is in attendance as well.

MR. O'CALLAGHAN: Could you please state your name for the record.

MR. DAVIS: Gary Davis.

MR. O'CALLAGHAN: Counsel may object on grounds of privilege or relevance today and the committee chairman may rule on objections where a witness refuses to answer a question.

Would you please swear the witness.

Whereupon,

STEPHEN D. POTTS

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. O'CALLAGHAN:

Q Could you please state and spell your full name for the record.

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A Stephen D. Potts; S-t-e-p-h-e-n, D., P-o-t-t-s.

Q And your present business address?

A 1201 New York Avenue, Northwest, Washington, D.C.

Q Who is your present employer?

A Well, the President, I guess. I'm the director of the United States Office of Government Ethics.

Q And could you review your -- give me a brief overview of your employment history.

A Okay. I was, right out of law school, I was drafted and served about five months as an enlisted man, then was commissioned as a first lieutenant in the Judge Advocate General's Corps, served three years. Upon completion of that service, I returned to Nashville, Tennessee, where I had gone to college and law school and practiced law there for two years.

And then for two years was an officer of

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Cherokee Life Insurance Company, and in 1961 I moved to Washington and joined my brother and four others in a law firm, Shaw, Pittman, Potts, Trowbridge & Madden, as it was named then. Practiced law there approximately 30 years and then was appointed director of the United States Office of Government Ethics in 1990 and was just reappointed in August to another five-year term.

Q And could you also give me a brief overview of your education.

A At the college level, I went to Vanderbilt University and got my both undergraduate and law degrees there.

Q And during the period of March through August 1994, you were serving as director of the Office of Government Ethics; is that correct?

A That's correct.

Q And who directly reported to you during that time period?

A Well, everybody at the U.S. Office of Government Ethics.

Q How many people are employed there?

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A Approximately 85.

Q And do you have any specific deputies or people who you are in contact with more than with other people at the office?

A In the office?

Q Yes.

A The senior staff, right.

Q How many members is the senior staff comprised of?

A Well, let's see. Gary Davis; the deputy director, Don Campbell; the education associate director, Barbara Mullen-Roth; the deputy general counsel, Jane Ley; director of administration, Bob Lammon; director of program assistance and review, Jack Covaleski; and the head of our OIRM, office of information resource management, Jim Parle; and then my special assistant, Stu Gilman.

Q Is there anyone that you report to specifically as director?

A No.

Q Under whose authority does the OGE operate under?

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A Just a statutory authority of Congressional authority setting it up as a separate executive branch agency.
Q And does any government entity have oversight responsibility for the OGE?
A The Congress.
Q Does the OGE make a yearly report to the President or any part of the executive branch?
A Biannual. We're required to submit a biannual report, which we do.
MR. DAVIS: He said to the President. That's to the Congress.
THE WITNESS: I'm sorry. That biannual report is to the Congress.
BY MR. O'CALLAGHAN:
Q Do you make any reports to the executive branch?
A Not formally. There is ongoing liaisons from our office to the White House, primarily through counsel to the President.
Q During the period of March through August 1994, who was the liaison between your office and the

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White House on both the OGE side and the White House side?
A The primary person from our side was Jane Ley, deputy general counsel, and to a lesser extent, Gary Davis and myself. On the White House side during that particular time, it was Lloyd Cutler. And the person that worked for him, that was a person that we had a lot of ongoing contact with was Beth Nolan.
Q You had the -- you were aware of the committee's document request, Office of Government Ethics?
A Yes, right.
Q Did you search for responsive documents, notes, reports, memoranda?
A I did.
Q And have all responsive documents been produced?
A To the best of my knowledge, they have.
Q Did you speak to anyone other than counsel prior to this deposition with regard to the deposition?

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A Well, yeah. I mean, my wife. I mean, there were a number of people I talked to just to say I was doing it. I gave a speech at the JAG school yesterday and told them I couldn't stay for lunch because I had to get back up here to get ready to give this deposition.

So they were -- there were a number of people that I talked about it but no one that I really discussed the substance with other than Gary and Jane Ley and Robert Cobb. Gail Dugan -- Robert Cobb is a young attorney in our organization. Gail Dugan is our Congressional liaison. I think those are the only ones that I had any discussions with about any of the substance of what was going to happen.

Q And what type of discussions did you have with them?

A Well, they related to -- Robert Cobb had major responsibility in making sure that we complied with the document request, so, you know, there were a number of discussions with him about that. There were discussions with Gail just -- again, she was

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kind of working with Robert Cobb to make sure that we had everything.

The substantive discussions that I had were with Gary Davis and Jane Ley. Primarily there were some dates and things like that where, this is all like a year and a half ago, and trying to look at documents and then where there were kind of ambiguities or things that I wasn't clear about by memory, I discussed with them to try to, you know, help remember better when things happened and who was involved and that sort of thing.

Q When was the Office of Government Ethics created?

A 1979.

Q And do you know for what purpose it was created?

A I wasn't involved with it at the time, but just my understanding of the history, it was really an outgrowth of Watergate and a decision by the Congress that there needed to be this office that would be the establish -- establish the ethics policies for the executive branch. So in '79, it was

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established as just an office within the Office of Personnel Management. In fact, Mr. Davis was one of like three people who -- I guess all of them were really pulled out of the Defense Department and put over in OPM to be the beginning of OGE.

Q And what would you say the overall mission of the OGE is today and also during March through August of 1994?

A Well, the main mission is to provide leadership to the ethics program for the executive branch.

Q And how does it accomplish that mission or goal, goals?

A It accomplishes it through our three program offices. The first program is the office of program assistance and review headed by Mr. Covaleski, and it has has these two branches. First of all, the program review, which is -- in terms of personnel, is our largest commitment and largest program in that sense. Their responsibility is to go into various departments and agencies on a periodic basis.

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Right now, we're on kind of a cycle of about every four years to do a thoroughgoing review of the ethics program, of whether it's Department of Agriculture, SEC, White House, et cetera, to then prepare a report analyzing both the goods and the bads and suggestions for improvement with follow-up 60 days later, and then six months later to make sure that these improvements have occurred.

The other branch that he oversees, program assistance, we have a system, really copied from the State Department, of desk officers and a desk officer is assigned a basket of client agencies. And he or she has the responsibility of maintaining contact with those client agencies to stay on top of what's going on in that program, to try to be helpful.

They have sort of brown bag lunches or coffee klatches or whatever to bring their people in and talk about common problems. And it's just a way both of trying to stay ahead of the game in terms of what are the issues out there, and also, it's a great pipeline for us to find out what's going on.

Then -- so that's program assistance and

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review. Then education has the responsibility to fulfill our educational role to see that all executive branch employees who are coming into the government are required to have a minimum of an hour of ethics training and then senior employees have to receive annual training. And we do not provide the training directly to the employees. We provide -- we train the trainers and we provide educational materials ranging from videotapes, video games, pamphlets, all kind of material.

We hold an annual conference which is educationally related.

Then we have the office of general counsel and legal policy headed by Gary Davis, and that office has the responsibility of writing the regulations, such as the standards of conduct, interpreting the standards. It also has the responsibility to process the financial disclosure statements of all Presidential nominees that must be confirmed by the Senate, analyzing those for conflicts of interest and participating in the negotiation of ethics agreements whereby the

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candidate agrees to cure whatever conflicts of interest that we identify.

So I think -- you know, there are some other minor things, but I think that hits really the substance of our program.

Q Does the Office of Government Ethics also provide written reviews of specific conduct that may be brought to its attention or --

A Rarely. Actually, this is a system that's very decentralized, and the primary authority to do that is lodged in each department and agency, which in every department and agency is required to and does have a designated agency ethics official. So the first line of defense, so to speak, in the system where there are ethics issues that arise within an agency, we expect those to be handled at the agency level, but we are always available and frequently are consulted by ethics officials who have a problem, but we expect them to give the advice to the head of their agency.

Q So the designated ethics official use the OGE as more of a consultant? Is that a good

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characterization?
A Right, right. Now, occasionally, what happens, we issue written opinions and where, for example, an ethics official raises an issue that -- although it's arisen in that agency, but it's clear to us that it has executive branchwide applicability, we will sometimes then issue a written opinion giving the advice, usually the advice is given to that agency, but then we publish it so everybody will know that that's the gloss we put on the regulation, for instance.
Q Do you know when the last program review was conducted at Department of Treasury?
A I don't recall offhand. We could supply that, but I don't remember exactly when it was done.
Q Do you know if one has been done in the last five years?
A I'm pretty sure it has, right, because I think we would have -- any Cabinet level agency, I'm sure we've covered within this four-year cycle.
Q And are there any --
A Let me -- actually, with Treasury, it's

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probably been done with various components because, as you know, they have got a lot of different responsibilities like the Internal Revenue Service, so we may have done Internal Revenue Service but we may have done, and probably have, you know, sort of headquarters but then there's also Alcohol, Tobacco and Firearms. So quite often in an agency like that, we will have gone in and rather than try to bite off the whole thing, we'll bite off chunks of it.
Q If we could, I would like to request to have any copies of a review you may have done in the last five years of Treasury main to be provided.
A Sure.
MR. O'CALLAGHAN: That would be great.
MR. DAVIS: That's no problem.
BY MR. O'CALLAGHAN:
Q Thank you. Does the Office of Government Ethics also do program reviews of the Resolution Trust Corporation?
A Right.
Q Do you know when the last review of that was conducted?

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A I don't know.
Q I would also like to request if you have any reviews of RTC in the last five years, that would be great.
A Sure, okay.
Q And does the Office of Government Ethics also conduct program reviews of specific inspector general offices of any agencies or would that be included in the entire agency?
A That would be included in the entire agency. I don't recall that we've ever done one just of an IG shop. It would be in the agency.
Q Okay. During the period -- of course, these questions are all to the best of your knowledge.
A Sure.
Q During the period of March through August of 1994, who was the designated ethics official at Department of Treasury?
A Let's see, I think -- was Dennis Foreman the DAEO? I can't remember whether he was -- sometimes they will have somebody higher-up that's

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technically the DAEO, but then the alternate DAEO does all the work. Dennis was in this case both the DAEO and the person who really did shoulder the load.
Q And when you say "DAEO," you're referring to?
A Designated agency ethics official.
Q So if there had been an ethics problem that the Department of Treasury needed to get advisement on, Dennis Foreman would normally be the person to contact OGE with regard to that?
A Right.
Q Do persons other than the designated ethics officials -- is it official or officer, I'm sorry?
A Officer.
Q Officer at agencies, other than the DAEOs, is it your experience that -- let me rephrase the question, excuse me.
MR. PORTNOY: Before we do, Mike, I'm just going to ask you where we're headed with this, with respect to the resolution. I mean, this is just general stuff about how OGE functions and it really has nothing to do with the report they issued or with

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the use of the depositions.
MR. O'CALLAGHAN: Well, in order to understand what happened with the OGE and how they issued the report, I think it's important to get an idea of how the agency functions and how it operates and it goes to, pretty much to the heart of the report. If you have a problem with it, objection to it, state it for the record, but I would like to continue my line of questioning.
MR. PORTNOY: Let me finish. We're not here to discuss how the report was issued. We're here to discuss whether the report was improperly released or whether the depositions were improperly released or whether there were improper communications. We're not here to go back into, after five days of hearings previously, the whole process by which this report was compiled or by which OGE functions. And I've listened to it for a while and didn't say anything and I just want to urge you to please speed it up and get to what we're here for.
MR. O'CALLAGHAN: Well, I'm not going to speed my questions to the detriment of the testimony

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and our factfinding here, but I will endeavor to keep your concerns as minor as I can as we go through the deposition. Thank you.
BY MR. O'CALLAGHAN:
Q Mr. Potts, the question I was attempting to formulate was whether, in seeking advice from Office of Government Ethics, whether it's common practice for someone other than the designated ethics official to request advisement from the Office of Government Ethics.
A I'd say that happens quite frequently, that there would be contacts between someone that works for the DAEO contacting someone in our office, that, for whatever reason, they know or they have reason to know, might have information that would be useful for them and therefore, a person that they could, you know, use as a sounding board or perhaps find out just what our interpretation is of a particular rule or reg.
(Witness conferred with counsel.)
THE WITNESS: Yeah, there are alternate DAEOs that are -- that actually are named in each of

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the departments and agencies.
BY MR. O'CALLAGHAN:
Q In your experience over, let's say, the last 10 years, how often has an Office of Government Ethics been approached by heads of agencies to look at ethics issues?
MR. KRAVITZ: I think Mr. Potts has only been there since 1990.
BY MR. O'CALLAGHAN:
Q I'm sorry, 1990. I apologize.
A To look at ethics issues?
Q Correct.
A It isn't real frequent, but I would be hard put to -- if I'm including informal contacts, because I'll just give you an example. It's like, you know, I might get a call from the head of an independent agency to talk about a problem they had with another commissioner, and that's a typical kind of problem where it puts them on a hot spot because they don't want to try to criticize one of their fellow commissioners whose vote they need.
So, you know, it doesn't happen a lot, but

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it does happen, but I couldn't tell you exactly how often, because, you know, for the most part, they are either on the telephone or just a visit to discuss it and that sort of thing.
Q And during your time as director of OGE, have you ever had a request for -- from -- a specific request from agencies to issue reports on ethics issues?
A Well, this one was unusual, the one we're talking about, that came from Secretary Bentsen.
Q And you're talking about -- when did that occur?
A I think it was in March of '94. He requested in writing so I think it's in the papers somewhere, the exact date, but my recollection is March.
Q I can show you a document that's Bates stamped 1187. It's a one-page document, Department of Treasury letterhead, addressed to you. Does that refresh your recollection?
A Yeah.
Q March 3, 1994?

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A Right.
Q During the time period -- I'll take that back, thanks.
During the time period January '93 through March 1994, what was the first communication that you or anyone at the Office of Government Ethics had regarding possible improper contacts between Department of Treasury and the White House relating to the Resolution Trust Corporation, Madison Guaranty Savings and Loan Association and Whitewater Development Corporation?
A I can only speak for myself, and I don't recall that anybody else on the staff said anything to me about it prior to this, except for just like --
Q When you say "this," are you referring to the March 3 letter?
A To the March 3 letter. We knew -- I should say again, it's a long time ago. My memory is that what happened was that somebody from Treasury called. I was -- I don't know where I was but I wasn't at my office, and they talked to Don Campbell, who is the deputy director. I'm pretty sure it was

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Dennis Foreman called and I wasn't there and then Don Campbell took the call, and Dennis said that -- and there had been stuff in the newspaper about, you know, the Whitewater and the possible involvement of some Treasury officials, et cetera, in this Whitewater investigation and particularly having to do with the RTC's resolution of the problems with Madison Guaranty and so on.
So he said that Secretary Bentsen was going to ask us to look into the matter and give him advice on whether or not any of his people had violated the standards of conduct. And I don't remember the exact sequence, but I know we were told that and it was, like it was going to be on the radio and Don turned the radio on and literally just within a very short time, he heard it on the radio.
And then we got the letter. Now, I don't remember exactly whether the letter was hand-delivered that day, but it was all within a matter of days that that happened.
So just to back up, we were aware -- I was aware that prior to that event of March 3 and the

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phone conversations between Campbell and Foreman, that from newspaper accounts and so on, that something was going but we had not as an organization gotten involved.

Q Did the Office of Government Ethics receive any phone calls or communication from any other agencies with regard to this matter?

A At that time?

Q Correct.

A Not to my knowledge, no. It was just, you know, from Treasury to us.

Q And at any time did any other agency request the Office of Government Ethics to look into this matter?

A No.

Q Had the Office of Government Ethics ever been requested to perform a review of this nature before in the past, to your knowledge?

A During my tenure, not like this, no.

Q I would like you to take a look at the March 3 letter, which is Bates stamped 1187, which is from then-Secretary Bentsen addressed to you.

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A Right.

Q I would like to direct your attention to the second paragraph there where it reads "I would appreciate your views as to any ethics or conflicts issues that may be raised by the facts and circumstances surrounding these discussions."

Did you get any other more specific instructions from Secretary Bentsen as to the type of work that he was requesting OGE to perform?

A No, I didn't speak to him. I didn't have a conversation with Secretary Bentsen, just this letter.

Q Just this letter? Did he send any other correspondence or any other communications that more specifically requested action be taken?

A I -- not between Bentsen and me. I think there -- I'm sure there were conversations that took place between staff members at OGE and Dennis Foreman or someone working for Dennis Foreman. There was a follow-up as to -- because we immediately had a couple of problems. I mean, this was, you know, a big surprise.

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Q And why was it a big surprise?
A Well, I mean, we didn't anticipate -- I mean, we knew Treasury had these issues. But as I had indicated, we had this decentralized system and they had a DAEO and the normal process would have been for, you know, them to deal with their issues, for Secretary Bentsen to get advice from his DAEO about what their people had or had not done. They have an inspector general to do the investigative work.
Q Okay. And did OGE decide that it would provide Secretary Bentsen with its views on any ethics or conflicts issues that may have been raised by the facts and circumstances surrounding the discussions regarding Treasury and White House contacts?
A I mean, our first reaction was -- at least my first reaction was to say, you know, this is not our role, you know. And in the discussions, and these were not discussions that I had, but my staff, with, I'm sure his staff, not with the Secretary personally, it came out that Dennis Foreman himself

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had been involved in some of the discussions that were at issue, so that really changed my view. In other words, Foreman was really not in a position to render any kind of impartial advice since he himself was possibly implicated.
So it seemed appropriate under those circumstances that we would really have to step in to, in effect, play the DAEO role but there were two other things that we -- that came up in that discussion at that time. One was there was an implication, anyway, that we were going to do an investigation. And we have no investigators on our staff. We don't do investigations so --
Q If I can interrupt you just for a moment.
A Right.
Q Where did the implication that you all were requested to conduct an investigation come from?
A Just from this letter. I mean, that was -- and I think also as maybe the initial discussion between the staffers where, you know, they would appreciate our views, raised by the facts and circumstances surrounding these discussions. And I

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directed my staff to cooperate fully with you in assembling these facts. The implication was he was expecting us to do that.

So we made it clear that, you know, we could not do the factual investigation, but we would serve as a resource to the inspector generals both of the RTC and the Treasury Department, to counsel them while they did the factual investigation.

The other problem that we felt hadn't been addressed was the fact that then-independent counsel or special counsel, I guess he was called, Bob Fiske, had an investigation going on and our experience was that these counsel did not appreciate anybody else or especially IGs mucking around in an investigation while they had something going on.

Q And when you say that you offered that the OGE could serve as a resource --

A Right.

Q -- could you explain to me more what you mean by "resource."

A Basically what we were -- the role we could play and actually did play was to get together with

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the inspector generals and sit down with them and first say look, we've -- based on the newspaper reports and just the other information that's available to us, it appears that here are the provisions of the standards of conduct that could be implicated by the facts that, you know, that are floating around out there. And so you should focus your investigation on facts relevant to these kinds of issues. We also provided them with specific questions we thought they ought to ask to develop those kinds of facts.

Q Do you recall what specific standards of conduct were identified?

A I don't remember all of them. We put it in writing and there was a pretty long list. There was a concern because of everybody had been focusing on improper disclosure of confidential information, and that was kind of the, clearly, it seemed like the number one standard of conduct that was at issue but there were some others. So what we -- the purpose of our communication was to make sure that they didn't just limit themselves to looking at that disclosure

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of -- improper disclosure of confidential information but at least looked at some of these other provisions in the standards of conduct that could be implicated.

Q And just to flesh out or to fully describe OGE's role in this process, was the OGE providing advice to Department of Treasury? Were they conducting a review and later issued a report for the entire executive branch? How would you describe the process?

A What I would describe is we had been requested by Secretary Bentsen to do more than we could do, so we went back to describe what we would do and then that's what we did do, and that was to act as a resource to the inspectors general of Treasury and RTC who were doing the factual investigations.

Q Were you acting as consultants to them or how did you --

A Well, we were -- I guess, I mean that's -- I don't want to characterize it. I mean, we were the resource, they consulted with us, that's for sure, and we gave them advice about, you know, what they

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ought to be -- in other words, what are the provisions that might be implicated here, what kind of questions you need to ask to develop the facts to provide us the information we need to then do the analysis of squaring those facts with the particular provisions in the standards.

So that was --

Q Did you consider them equal partners in the process?

A Well, no, I thought they were -- I mean, we had different roles. You know, they had the investigative role and we had the resource analysis role.

Q And did OGE request RTC IG and Treasury IG to do the investigative aspect of this or how were they involved?

A No, we really -- you know, we don't have any authority over them, so just -- it was an outgrowth of the discussions we had with Treasury officials where -- going back to point out, you know, we can't investigate this but you've got the IGs, that's what they're for, so tell them to do the

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investigation and we will cooperate with them to be a resource while their investigation is going on. And we will, because of these unusual circumstances, provide Secretary Bentsen with our analysis of the investigative -- what the facts as developed by the IGs show as to whether there were any violations of the standards of conduct.

Q How was the Resolution Trust Corporation IG's office first brought into the process?

A Actually, I don't really know. I assume it was just by, you know, a directive from the Secretary.

(Witness conferred with counsel.)

THE WITNESS: Mr. Davis does remind of one other time where we did something that would be somewhat comparable to this, and that was during the Bush Administration, when the White House did an investigation of Mr. Sununu and his alleged use of government transportation for private purposes without reimbursing the government. And we did at the request of the White House, review their analysis and issued a report on their report, basically.

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BY MR. O'CALLAGHAN:

Q And that was an analysis that was conducted by the White House?

A Right, by -- right, counsel to the President conducted that initial look at Sununu's activities.

Q I would like to show you a document which is Bates stamps number 06105. It's two pages. It's a letter on Office of Government Ethics stationery dated March 15 addressed to Lloyd Bentsen. And I believe it's signed by you. Have you ever seen this document before?

A Yes, I have.

Q Is that your signature that appears on the second page?

A It is.

Q What is this document?

A Well, it's the letter which we wrote as a result of the request from Secretary Bentsen and the purpose was several-fold, as you can see. One was to make it clear that we were not going to investigate, that we would serve as a resource to those who did

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the investigation. And then that we would provide our views about whether there were any violations of the standards of conduct. But then as I had alluded to earlier, it was clear to us that consideration had not been given to the fact that Bob Fiske, who was independent counsel who had his own investigation going on, that consideration had not been given to the interrelationship of those investigations. And so, you know, we talked about that in the letter.

Q I would like to direct your attention to the second page of the document, which is 06106, and the first full paragraph there, which reads "In addition, because Mr. Altman was acting in his role as the chief executive officer of Resolution Trust Corporation, RTC, because information must be obtained from that agency and its employees in order to address properly all the issues, we will also meet with the inspector general of the RTC."

Does that help refresh your recollection as to how or when the RTC was first involved in this process, RTC investigator?

A It was certainly the first time that we

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made it clear to Treasury that the IG of RTC had to be involved. Now, in all honesty, I can't tell you -- I don't recall one way or the other whether they may have already focused on that and we were telling them something they already knew and had already done something about. In other words, they may have already talked to the IG at RTC and said, you know, you're going to have to be part of this and conduct your own investigation, but -- so I just don't know whether this was news to them or whether they already knew that.

Q I would like to take you back to the first page of the document, and in the third paragraph there it states "early" -- "early last week OGE staff met with the staff from the Office of Independent Counsel, Robert Fiske. At the meeting my staff outlined OGE's role in the executive branch and discussed the steps the OGE might take in response to your letter."

Do you recall the substance of those discussions?

A Well, I know what we were just talking

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about is the fact that --
MR. PORTNOY: I, just before we go forward, want to urge you to --
MR. O'CALLAGHAN: With regard to what you discuss here in the paragraph.
MR. PORTNOY: Let me just make my record. I think we've agreed to the extent possible that we're going to try to avoid discussion of precise communications with the Office of Independent Counsel and I would just urge you as you pursue this line of questioning to keep that limitation in mind.
BY MR. O'CALLAGHAN:
Q Mr. Potts, if you could tell me what you discussed, as long as it doesn't touch upon the investigation being conducted by the independent -- special counsel at the time.
A Right. I mean, that's specifically what we were talking about. I mean, we were meeting to, I would say really confirm our -- what we thought was going to be the result of the meeting, that independent counsel would not want an investigation to -- a parallel investigation to be pursued until he

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had completed at least this particular phase of his own investigation. And the reason we were pretty sure how he would feel is that we had been through this kind of thing before with other independent counsels where they were investigating possible criminal wrongdoing.
And just as a matter of policy in our office, it's sort of like a criminal investigation, while it's going on, trumps any administrative investigation, so we will step aside while the criminal investigation is ongoing, with the understanding, and this is what we also agreed with Mr. Fiske, that when they had completed their investigative work, they would notify us immediately so we could get on with our administrative work. So that's what the meeting was all about.
Q Okay, thank you. I believe you stated earlier that one of the reasons why the OGE took it upon itself to conduct this review was because the Treasury DAEO, which was Dennis Foreman, may have been a part of the possible subject of the discussions that were at issue?

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A Right.
Q You also mentioned that agencies on occasion have alternate DAEOs?
A Right.
Q Did Treasury have an alternate DAEO at the time?
A I'm sure they did, right.
Q Do you know who that was?
A I don't recall, no.
Q Was there ever any consideration given to whether the alternate DAEO should handle this issue for Treasury, rather than going to the OGE for help on this?
A I don't recall specifically focusing on that, but I think it was probably not really a realistic possibility because it would be, you know, a subordinate in effect having to pass judgment on his boss and also -- I think it would raise a question as to how reliable it was, of giving advice to the rest of the officials in the agency, including the Secretary.
Q In a March 15 letter, Secretary Bentsen

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mentioned that after the -- Mr. Fiske had given you the okay, that he had completed his investigation and he didn't have a problem with other review going on regarding this issue, that you would have discussions with the IG's office of Treasury and maybe have plans to talk about a strategy before you were given the go-ahead by Mr. Fiske. Do you recall the first meeting that occurred between the Office of Government Ethics and Treasury IG after March 15?
A I don't. I know you're going to depose Jane Ley later, and I think she would probably have that information.
Q Has the Office of Government Ethics ever worked in conjunction with the IG's office of any agencies in the past during the process of conducting a review?
A I am --
(Witness conferred with counsel.)
THE WITNESS: We have many times, as the IGs have issues coming up and they will consult with us. I'm also a member of the, what's called the President's Council on Integrity and Efficiency.

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That is an organization which consists of all of the statutorily appointed inspector generals for all the different agencies, plus there's a representative from the FBI, from the office of special counsel, OMB and myself. Those are the -- that's the membership. And we have monthly meetings. You know, occasionally there are things that are discussed there that you might say are general advice to IGs as well as the individual kind of calls and issues that come up.

BY MR. O'CALLAGHAN:

Q And other than providing advice to IGs' offices, have IGs' offices ever assisted in factfinding for the OGE in any kind of reviews it might be conducting or advice it may be giving out?

A Well, I mean this was -- it's certainly true that we have been called upon to give advice to a DAEO that, you know, is wrestling with a particularly difficult problem, where the DAEO is the -- the factual situation that the DAEO is dealing with was developed by the IG in that department but in those kind of cases, we wouldn't have been dealing with the IG, we are dealing with the DAEO.

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Q I'm just trying to --

(Witness conferred with counsel.)

THE WITNESS: I'm advised by Mr. Davis, who has been there from the beginning, that our staff quite often will get calls from IGs or whatever and we are giving them advice.

Q I'm just trying to get a feel for the report and the process.

A Right.

Q Would you characterize the report that was done as a -- and the contact and the coordination that was done with the two IGs' offices an extraordinary occurrence for OGE?

A Well, it was, yeah, unusual. The circumstances were unusual. We hadn't had anything quite like it before.

Q And had you ever issued a report quite like this before?

A No. I mean, I referred to the Sununu thing but I mean, again, it's not exactly the same.

Q And did you make the final determination to put this process together, coordinating with the two

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IGs' office and then issuing a report or how did that come about? Who made that decision?

A It was my ultimate decision, but it was the fruit of conversation amongst particularly Gary Davis as general counsel, Jane Ley as the deputy general counsel, Don Campbell, deputy director. I think we were the four principal players in that discussion. There was also some staff work done by, I think, particularly Leslie Wilcox, who then later was part of the team that worked on doing our analysis and she was included not only because she's just generally a good lawyer but these were standards of conduct issues, and she was the attorney who was the principal drafter of the standards of conduct.

Q And what was the report's analysis based upon?

A It was based upon the investigative report of the IGs but the way the process worked, because of the time frame, we were receiving the transcripts of the investigators' depositions of witnesses and the documents as they were produced and developed, so we would get those documents and transcripts and

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probably starting somewhere end of the first week of July, and those of us who were in the -- on the team and in the decision tree would review those materials, including myself.

I mean, as it turned out, there were over a thousand pages of transcripts and everything, and knowing I had to put my name on the report, I read every one of them and every document to assure myself that as my staff worked up the report -- our analysis, that I was comfortable with our description of what the factual situation was that we were basing the analysis on.

Q Who at OGE had access to the transcripts that were provided to you by the IGs' offices?

A Well, let's see. I can tell you the people I know. The -- myself, Don Campbell, the deputy director, Gary Davis, the general counsel, Jane Ley, deputy general counsel, Leslie Wilcox who was a staff attorney. Those are the principal ones. I'm sure that other -- I don't think that we -- I mean, we were very careful about safeguarding the transcripts and everything, but there may have been other people

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that -- well, actually I know Robert Cobb also did some work on a few things, and Stuart Rick. Those are both staff attorneys.

Q You said you were careful about the transcripts. Why were you all careful with the transcripts?

A Because these were sensitive information which really bore on, and for better or worse, were going to bear on the reputations of the individuals that were under investigation, and, you know, fairness to them and to the process, that kind of information if it's leaked can be very damaging, perhaps unfairly, to them and also it can impede the effectiveness of an investigation.

Q Did you consider any of the information contained in the transcripts to be confidential?

A I don't think we formally stamped everything confidential, but we treated it very carefully and circumspectly.

Q Did you share the transcripts with anyone outside of OGE?

A No.

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Q Where were the transcripts kept?

A Well, they were kept in our office under lock and key, but I couldn't tell you exactly where that was.

Q They were kept in a secured, locked room, to your recollection?

A Right, right, right. Or I don't know whether the room was locked but the file cabinets were locked.

Q What percentage of your time in July of '94 was dedicated to working on this report?

A Most of it.

Q And how about your staff?

A Well, I think particularly Jane Ley and Leslie Wilcox, I think were virtually 100 percent, and then these other people, including Gary Davis, Don Campbell --

MR. DAVIS: I wasn't there.

THE WITNESS: That's right, you were out of the country. I forgot that.

MR. KRAVITZ: Weren't working on it by modem?

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(Laughter.)
THE WITNESS: Robert Cobb and Stuart Rick were. I couldn't tell you, though, what portion of their time was spent on it, but it was definitely the main focus of our efforts, for the legal staff at that point.
BY MR. O'CALLAGHAN:
Q And during -- between March and August of 1994, did anyone at OGE have any contacts with anyone at the White House with regard to this report or the subject of it?
A Yes. Now, it was -- boy. I had one meeting at the request of Mr. Cutler in which we met to just indicate what we were going to do. He wanted to know what the process was all about. And there was no discussion of any substance at that first meeting, which actually I had -- when I was looking at my calendar, I was trying to sort this out, that there was -- my calendar showed I had one meeting with him about June 20, and another one about July 11. My recollection is that the meeting on June 20 did not have anything to do with Whitewater, it had

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to do with another subject.
Q Do you recall what the subject was?
A I believe it had to do with --
MR. DAVIS: Careful. I mean, you can tell what it is, but we won't go any further because it's not relevant.
THE WITNESS: It isn't relevant to this, if that satisfies you. It had nothing to do with Whitewater.
MR. PORTNOY: Is that sufficient?
MR. O'CALLAGHAN: Yeah, that's sufficient.
THE WITNESS: The other -- I think it was July 11 meeting was the one that we had where we had just a general discussion about what we were going to do, how we were going to proceed, also making it clear, as we had much earlier to Secretary Bentsen, that we were not going to say that we were making a finding as to whether these people had violated the code of conduct.
And the reason for that was we have procedures that if someone is charged with a violation, it triggered a whole panoply of individual

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rights for hearing, et cetera, et cetera. So we had to be very careful to avoid representing that we were making a finding or anything, because we weren't. We were going to give him our analysis of these facts for him to make his determination.

BY MR. O'CALLAGHAN:

Q And where did that meeting take place?

A In the White House.

Q Was anyone else at the meeting?

A Yes. I know Jane Ley was there, and I think Leslie Wilcox. Mr. Cutler, and there were some other White House staffers there but I don't remember who they were. Probably Beth Nolan was there, I'm pretty sure she was there.

Q Was anyone from any other agencies there, from Treasury, RTC?

A No, I don't think so.

(Pause.)

Q The July 11 meeting at the White House with Mr. Cutler, how long did that meeting last?

A It wasn't a real long meeting. I mean, I would say it was -- and you know, it's been long

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enough ago, I just -- my memory is that it was like half an hour, something like that.

Q I know I'm taxing your memory, but do you recall what time of day the meeting took place? Was it morning, afternoon, evening?

A I remember just my -- and I wouldn't have remembered it if I hadn't gone back and looked at my little day book, but one of those meetings was at 11:30 in the morning and one of them was at 1:15 in the afternoon and right now, I can't remember which was which, but --

Q Do you recall whether you had lunch at the White House or --

A I know we didn't, no. It was not a lunch meeting.

Q Other than a general discussion about what OGE was intending to do with regard to preparing its report or its review, did you have any other discussions about -- more specifically about what OGE was going to do or what RTC IG or what Treasury IG was going to do with regard to conducting this process?

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A I think we were also, you know, wanted to use the occasion to make it clear that we were going to do our work and call it the way we thought the facts warranted.
Q And who called the meeting? Who requested it?
A Mr. Cutler.
Q Did he contact you or someone else at OGE?
A I'm pretty sure he contacted me on that one.
Q When did he do that?
A I really don't remember, but I don't think it was a long time. It was just, you know, within a day or two before we had the meeting.
Q And was that by telephone or --
A Right.
Q By telephone. And how long was that conversation?
A Just, you know, couple of minutes.
Q Did he relate to you during that conversation what the purpose of the meeting was?
A Just said he wanted to find out what we

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were going to be doing.
Q Did Mr. Cutler ever suggest that he wanted White House counsel to have a role in that process or lend assistance in any way?
A Not at that time. I don't recall that he did, no.
Q Did he at any time?
A There was a later meeting that he requested, he wanted me to attend just like somewhere around right toward -- it wasn't too long before we issued the report. It was like the 25th or somewhere in there.
Q Does your calendar make reference to the meeting, the calendar you reviewed?
A Yes, and there were some notes that we produced for the committee that actually I made some notes of that particular call on the telephone. And it was -- you know, he wanted to have a meeting, he wanted me to come. And I thought about it and just said I didn't think that was a good idea. He said that the White House had been doing its own analysis, et cetera, and the -- and what he said was, you know,

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you and your staff would benefit from hearing what -- the work we've done, you would get some benefit out of knowing what work we've done.

After I thought about it, I thought well, I would like to know, before we issue our report, I would like to know whatever work they have done and what their slant on it is, because either we have missed something or that if they have already -- presumably they are trying to defend what they are doing. If they have raised -- or defend what happened.

If they have either had some information that they are going to disclose to us which would be useful or there is -- if, you know, let's say we have a certain slant on something that was not correct and they were saying it was, we would like to know what their rationale is, both to reevaluate where we were going but also to be able to counter the argument if we disagreed.

So I asked Jane Ley and Leslie Wilcox to attend the meeting, which I know they did.

Q And do you know what occurred at that

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meeting?

A Just generally. I mean, you know, they reported to me later, but not in any great detail, because we were taking the position, you know, we'd be glad to listen but we're not there -- we're not going to discuss the substance of the report and what we were doing.

Q Did White House counsel's office ever provide OGE with any written materials with regard to this subject, their views or --

A Prior to our report?

Q Correct.

A No.

Q Did you request anything from them regarding this subject before you wrote your report?

A No, because we would have -- I think any of the factual stuff, we would have just said these are things, you know, that the IG ought to ask and maybe something was -- and clearly there were White House people that we had said to the IGs these are people you've got to question.

Q The meeting that Wilcox and Ley attended,

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was that on July 25?
A I'm not sure. It's right close in there, anyway.
Q Do you know who else attended that meeting? Were you ever told?
A Actually, I don't, no. My memory is it was called by Mr. Cutler so I assume he was there and I assume probably Beth Nolan is the person that did most of the ethics work for the White House.
Q During the July 11 meeting that you had at the White House with Mr. Cutler and I believe you said Jane Ley, Leslie Wilcox, Beth Nolan and others were in attendance also, other than providing a general description of what you were going to do with regard to the report and the process, were you approached by anyone at the White House for any materials in connection with the review that was going on?
A No.
Q Did anyone during that meeting relate to you or anyone there that the White House had been in receipt of any of the materials related to the review

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process going on with OGE, RTC, IG and Treasury IG?
A In going back over some of the notes and just assembling all the material and everything, actually, and I'm trying to remember, I think it was in the -- and we can check this, but -- because it hadn't really made an impression -- did not make an impression on me at the time and it's only now, you know, in looking back over the notes that when I saw the reference to it, that I -- that it had really any meaning to me.
There was a reference, and I think it was in the telephone conversation that I had with Lloyd Cutler about that meeting around the 25th, in which he was relating that they had done their own analysis and, you know, that we would benefit by knowing what they were doing, that he made reference to the fact that in doing that analysis, they had reviewed at least some transcripts of the testimonies that were -- had been performed by the IGs.
As I say, when -- and you know, I was talking and making notes and everything of just what was going on, and, you know, frankly, that business

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about the transcripts went right over my head, I didn't think about that one way or the other as being good, bad or indifferent. And it's only subsequently when pulling this stuff together and rereading it, when I saw that, it made me realize that at least he had told me that they had certain transcripts and that I know at least some people have felt that that was not what the IG should have done.

Q Do you think the IG should have provided transcripts to the White House prior to July -- I believe they're prior to the 23rd, or that time?

A I don't know. I don't -- I really haven't thoroughly analyzed it. I think it would depend an awful lot on what the nature of the information was. I mean, I think some -- certainly a lot of the transcript material I don't think there would have been any harm. Maybe there's something in there that could, but I haven't done that kind of analysis so I really can't offer a helpful opinion.

Q Well, maybe -- correct me if I'm wrong, but did I misstate that the Treasury IG provided the transcripts to the White House?

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MR. KRAVITZ: I don't know what you said. I'm not sure that we know at this point who provided the transcripts.

THE WITNESS: And I don't know. I don't know where he got them or who provided them myself. Except I know that he didn't get them from our office.

BY MR. O'CALLAGHAN:

Q Did you ever hear that the Treasury provided the White House with unredacted copies of the transcripts that were prepared in connection with the review that you were conducting?

A Prior to the report, the only thing that I had heard was really this reference in the conversation between Cutler and me that he had transcripts. But, you know, it wasn't the focus of the conversation and it was just, I guess, his way of saying that he had a factual -- reliable factual predicate for the White House analysis, which he thought we ought to know about.

So as I say, it went right by me. I didn't think about the propriety at the time of whether he

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should have the transcripts.
Q Did he identify to you where he had received the transcripts from?
A He didn't, no.
Q Did he characterize the nature of the transcripts?
A Other than -- no, just other than they were obviously transcripts of testimonies of people that were being investigated by the IGs.
Q So you were aware they were transcripts that were taken --
A Right. They were the same ones -- at least I was left with the impression they were the same ones we were looking at.
Q And you said at the time you didn't have a real reaction to it, to Mr. Cutler telling you he had the transcripts. Have you since had a reaction? I mean, you said you read through all the transcripts in preparation of your report. You said you didn't have an opinion at the time as to the propriety of it. Do you now have an opinion as to the propriety of him receiving the transcripts?

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MR. KRAVITZ: Are you seeking an ethics analysis or just his reaction kind of more generally?
MR. O'CALLAGHAN: I'll start with his general reaction and then I'll probably ask him for an ethics opinion.
THE WITNESS: It only -- only to the extent that I realize that it raised the -- just a question about, you know, the propriety of that information. But I haven't really done any further analysis or asked my general counsel or anyone else to really analyze that any further, partly because our jurisdiction only extends to employees. And Mr. Cutler is no longer in the government, so he's beyond our reach.
BY MR. O'CALLAGHAN:
Q Have you ever been asked by anyone with the Department of Treasury to look into the propriety of providing the transcripts to the White House?
A No.
Q Has anyone approached you about preparing a review of the provision of the transcripts to the

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White House in this case?
A No.
MR. O'CALLAGHAN: Do you want to take a break here?
MR. KRAVITZ: If that's okay with everybody else.
MR. O'CALLAGHAN: We'll take a five-minute break. Off the record.
(Recess.)
BY MR. O'CALLAGHAN:
Q Mr. Potts, I would like to refer you back hopefully one more time to the July 11 meeting you had with Mr. Cutler and others at the White House. Did Mr. Cutler relate to you that at that time that the White House was going to conduct its own investigation into this matter?
A I don't recall that he did, no.
Q Do you recall the first time he did do that?
A I think the first time I was aware that they had really done anything was on that conversation I had on the phone with him about the

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25th of July. I can't say that I was really surprised by that. I mean, it was -- this was obviously a matter of importance to the White House. So I mean, I knew that they were following it very closely but I guess on the 25th, it was kind of the first time that I had realized or been told that they were doing something that was more intensive than just monitoring and staying abreast of it.
Q Did he relate to you before the July 11 meeting or during the July 11 meeting why he wanted to get a briefing from you about what you were going to do with regard to this process?
A I really didn't have any impression, either from the call or whatever, that it was going to be anything more than letting him know kind of what the process was going to be like. And they also I know wanted to have a general idea about what we thought would be the timing. In other words, how long was it going to take to get this accomplished.
Q So it was more of a general informational meeting for the White House on the 11th?
A Right.

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Q What did you say about the timing when he asked you about that?
A What I recall saying at that time was that we really weren't sure, that we were going to do a good professional job, we were at the mercy of the IGs and the speed with which they got their work done, because we couldn't do the analysis until they had taken depositions of everyone that needed to be deposed and produced all the documents.
So at that point, we were really in the first, really 10 days of the intense part of the process, because there was, only at the end of June that the independent counsel had told us we could go ahead, so the IGs had really just been on the job 10 days at that point.
Q And was your analysis -- did you conduct your analysis in a continuing basis during the process or was it done at the end of the process?
A It was ongoing because as we got transcripts and -- I mean, let's say we got the Altman transcripts and everything, then we could do the analysis as far as Altman was concerned, so we

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were doing it as we got transcripts.
Q How soon after you got the final transcript was the report completed by?
A I don't recall when we got the final transcript. The IG report came to us in its packaged form like on the -- was it July 29 or 28, something like that, and then a day or two later we were able to issue our report. And I hand-delivered that to Secretary Bentsen on a Saturday.
Q Did you deliver it to anyone else?
A No, we had -- I say -- when I got over there, Kennedy, I guess is his name, was the one that met me and then Bentsen was in a meeting. But he went in and got Bentsen out of the meeting and I went into --
Q When you say "over there" --
A I'm sorry, Department of Treasury, yes. And then presented Secretary Bentsen with the report. I'm sorry, not -- the name is Knight, Ed Knight was an assistant to Secretary Bentsen.
Q And is there any reason you thought to hand-deliver it to Secretary Bentsen on a Saturday?

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A Yes, because the Secretary was very concerned that he have the report as much in advance of his scheduled testimony the following week, and he was, you know, in the process of preparing himself over the weekend. So Mr. Knight had called me earlier in the week and said, you know, we would like to get it just at the earliest possible moment for that reason.

Q Were there distinct drafts of your analysis during the process toward the final report? Did you have distinct drafts that were created?

A I know that there were. There were a number that I didn't personally see that were prepared by Jane Ley and Leslie Wilcox, you know, as they were doing their work, they would do a draft and everything, but not until they were satisfied with it would I see it.

Q And were these drafts shared with any other agencies or any of the IGs' offices toward the preparation of the final report?

A Not to my knowledge.

Q Did the IGs' offices prepare different

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drafts of their reports to you, do you know?

A I don't know.

Q Did OGE share any of the drafts they had with anyone outside of OGE?

A Not to my knowledge.

Q Did OGE provide any analysis in any form to anyone outside of OGE before the completion of the final report?

A Well, it was the analysis in the ultimate sense, when -- the late afternoon on Friday when we had really finished our report. In other words, I had signed off, I had reviewed it, signed off.

Q On Friday?

A On Friday, late Friday. And then we had to work some that evening and then the next morning to just get it reproduced and formally signed by me. And I had -- Ed Knight had been the person who a couple of times had called and said how does it stand and whatever. They were obviously very eager to get the report because they knew at that point that Bentsen was going to testify the following week.

And that evening I called him to say I

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can't give you the full report but I can summarize the analysis that -- sort of the end result of our analysis and so, you know, I told him at that point that our analysis did not reveal any violation of the standards of conduct by Altman, Jean Hanson or Josh Steiner, that it did reveal probable violation by one other person but who had retired and was no longer subject to the standards of conduct.

Q And you did this over the phone?

A Right.

Q Were you referring to the report that you'd put together?

A Right, that was our analysis -- I was referring to our analysis that we were going to provide him the following day.

Q You had already signed the report at that point, though, is that right?

A Well, I hadn't signed it because it was -- but I had reviewed it and signed off on it in the sense that okay, this is it, now we've got to reproduce it and get it all squared away and proofread and all that before I could -- I wanted to

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actually sign it and then deliver it over there.

Q And when was the report publicly released?

A We did not release the report. And I think -- if I'm correct, my recollection is it was either that afternoon or the next day that they released it. We didn't do it.

Q "That afternoon" meaning Saturday?

A Saturday, yeah. They may have released it that day, I'm not sure.

Q Is there any reason why the OGE who prepared the report didn't release it to the public?

A Yes, because we viewed this as providing, you know, our analysis to the Secretary at his request, so we didn't feel it was appropriate for us to make that public, or in other words, it was his call. We were providing the report to him and it was for him to decide whether to release it or not.

Q You said that Ed Knight called you a number of times. Was that leading up to the completion of the report or how much contact did you have with Ed Knight during the process, getting the analysis ready?

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A Only one time did he come over in person, right at the beginning of the process, to just -- I think to establish that he was the liaison here if we needed to have any contact with the Secretary's office and to emphasize that the Secretary felt it was very important to get this done in a very prompt fashion.

Q What was your reaction to that?

A That it was business as usual.

Q You were comfortable with that?

A Yeah. It was what you would expect, that they wanted to let us know and obviously we weren't going to call if we had some problem or something, we wouldn't want to call Secretary Bentsen himself, so we knew this was kind of the designated hitter, so to speak. And secondly, it was -- we would expect them to want us to do our work very promptly because this issue was in the press and everything and they would like to bring it to a conclusion one way or the other. Obviously they wanted a particular conclusion, but nevertheless it was, I think, from their standpoint to get on with it was still

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important.

Q And when you say "they wanted a particular conclusion," what are you referring to?

A Well, I mean I feel sure that the Secretary was, you know, would like to have wanted to believe that his people hadn't violated the code of conduct or hadn't been involved in any other misbehavior. And of course our report was focused just on the code of conduct, and as we emphasized in our analysis, you know, we weren't speaking to any of the other statutes and other things that someone might be guilty of violating, but it was just narrowly focused on the standards of conduct.

Q And did you or anyone at OGE give Treasury a -- an analysis previous -- or any kind of analysis about the report previous to the phone conversation you had Friday night?

A No.

Q During any of your phone conversations with anyone at Treasury at the time leading up to the production of the report, did anyone try to solicit information about the report or its contents?

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A No.
Q How many times would you say during the week up to the final completion of the report that you received calls from people at Treasury?
A I think just a couple that I received from Ed Knight.
Q And --
A The meeting where he came over in person was earlier. It was kind of near the beginning of the process.
Q And each time were the substance of the calls the same every time you called? Were they similar?
A Right.
Q Were they all related to the timing of the report?
A There was one in going back over, I had a note of a discussion and I can't remember now without looking at it, it was not having to do with the substance of the report but it was -- what the hell was it. It was something more than just the timing, but it was not -- he was not -- I mean, he understood

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from that first visit that we would not be discussing the substance of what we were doing with him until we completed the report.
Q Do you know or have you ever heard that Department of Treasury or general counsel's office were supplied with draft copies of the reports prepared by Treasury OIG in connection with the preparation of the OGE report?
A No, I wasn't aware of that. Let me make sure. This is like work that Treasury IG did, report drafts or whatever was supplied to the Treasury office of general counsel?
Q Correct. Have you ever heard that?
A Well, I know -- I mean, actually I didn't know this until we started the review, that the one -- somebody from OGC Treasury had been assigned to the Treasury IG to assist in this investigation, and I can't tell you exactly when I became aware of that, but it was after we had submitted the report that I was even aware that that took place, so --
Q Do you have any reaction to that?
A It's common that -- in fact, I think we in

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responding to either Congressman Canady I believe it was, he had asked a similar question and we pointed out that there were five IGs that rely on the general counsel in that agency to provide the legal advice. The others have their own in-house counsel. But there was a study done on that I think by GAO and they concluded that it didn't matter, but I can't -- you know, I have no judgment one way or the other as to whether there was any problem or what -- whether information went into -- from the IG to the office of general counsel at Treasury or from there to somewhere else. That, I have no information.

As I say, I didn't even -- I wasn't even aware that someone from the office of general counsel was part of the IG's team until after the fact.

Q How was that brought to your attention?

A Well, the most recent time that I can remember thinking about it was, you know, back this summer when we were preparing our replay to Congressman Canady, because he asked something specific about it. Before that, I can't tell you when I -- I don't have a recollection of being told

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or talking about it before that. I may have been, though.

Q Well, in the course of this deposition if it comes to you in your memory, if you can just let me know, please.

A Okay.

Q You can only remember what you remember.

A Right, right.

Q Other than the June 20 and July 11 and July 25th contacts with Mr. Cutler or people at the White House, did you or anyone else at OGE have any other contacts with anyone at the White House during this time period?

A Pertaining to -- and pertaining to Whitewater?

Q Correct.

A I really can only speak for myself. I don't know that anyone else did, although in -- and you're deposing Jane Ley this afternoon. Jane was the person in our staff that was the primary liaison with the White House across the board. And so, you know, there were -- we really viewed our role there

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as being an important -- having a very important prophylactic role in making sure the White House was apprised of any code-of-conduct types issues or restraints that we thought might impact whatever was going on at the time that we knew about, so Jane played that role.

I know for a fact that she didn't discuss any substance of our report with anybody at the White House, but whether or not there were conversations where somebody at the White House was asking her, you know, how is it going or how much longer is it going to take you to get it done or something like that, that, I don't know.

MR. O'CALLAGHAN: Off the record for just 30 seconds.

(Discussion off the record.)

BY MR. O'CALLAGHAN:

Q Back on the record. I just have a couple more questions and I'll be wrapping up. Mr. Potts, did you or anyone else have any contact with Secretary Bentsen during the course of the time period July 1 through July 30 with regard to the

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review you were conducting and investigations being conducted by RTC IG and Treasury IG?

A I did not, and to my knowledge, no one on my staff did.

Q Did you or anyone on your staff have any contacts with any Treasury officials other than people in Treasury IG's office?

A Other than what I described like on the telephone calls from Ed Knight, no.

Q Did you have -- did you or anyone on your staff have any contact with anyone at the Resolution Trust Corporation during that time period?

A I didn't, and nor to my knowledge did any of the staff.

Q And just for clarity, other than people at the IG's office.

A Right.

Q When you received the report or the report of the investigation that was conducted in relation to the report that OGE finally published, did the report become -- was it a single report or did you receive a separate report from the Treasury inspector

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general's office and Resolution Trust Corporation's inspector general's office?

A My recollection is it was one report.

Q And did either one --

A It was in -- I mean, you know, it was several volumes because we had all the transcripts and everything else.

Q Did each one of those agencies play an equal role in conducting the investigation or did one agency have a lead role?

A My impression is that the Treasury IG played a heavier role than the RTC IG, but I don't know exactly how that worked.

Q And what's the basis of your understanding?

A It just seemed like the first conversations that we had were with the Treasury IG. And, of course, it was the Secretary of the Treasury that was requesting it, so it seemed to me that that was kind of what the Secretary -- or what we understood, and made our first contact with Treasury IG to move forward with the investigation. And it was -- although some of the people like Altman had a dual

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role, they had some responsibilities with respect to RTC, it was primarily -- their primary role was for Steiner, Hanson, Altman, were as employees of Treasury.

So I just assumed that IG at Treasury would take the lead role in doing the investigation.

Q Did OGE initially approach Treasury IG or did Treasury IG initially approach OGE?

A I'm not absolutely certain. Again, the impression I have is that after getting the letter and everything and realizing there was this confusion, seemed to be confusion about our role, that we made the initial contact with Treasury IG. I think we made sure that they had received their instructions within Treasury that they were going to do the investigation and then we made the contact to discuss with them what sections of the code of conduct might be implicated, and we had already started working on questions that had to be asked to develop the facts and so on.

Q And in any of your discussions, though, with Mr. Cutler or anyone at the White House, did

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anyone ever relate to you that they did not have an intention to take testimony in connection with their investigation of these contacts?

A No, I didn't know there was any limitation at all placed on the instructions to the IGs to investigate.

Q No. I'm sorry. With regard to the White House counsel's investigation, I'm wondering if it was ever characterized to you that in the course of their investigation, that they didn't have an intention to conduct testimony.

A Oh, no, I didn't -- I didn't even -- prior to that conversation, I didn't know that they were doing what you would characterize as an investigation. I just, you know, thought they obviously were going to follow it very closely.

Q That was July 25?

A Right.

Q Before that, you didn't know about the mechanics of any kind of review investigation that might have been conducted?

A Right. And I wasn't informed of what the

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mechanics were then, other than this statement that I put in my notes about they had reviewed some transcripts.

Q You spoke with Mr. Cutler on June 20, you said earlier he called you. Actually --

A I think June 20, that was -- I think we had a meeting over at the White House, that was on something other than Whitewater.

Q Okay. I wanted to make that clear from my notes.

A Right.

MR. O'CALLAGHAN: I have no further questions at this time.

MR. PORTNOY: We would like to take about two minutes to confer and then we'll come back.

(Recess.)

EXAMINATION

BY MR. PORTNOY:

Q Back on the record. Good afternoon, Mr. Potts. My name is Jim Portnoy and I'm counsel for the Democratic senators of the Special Committee, and I'll be asking you a few follow-up questions.

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With me also is Neil Kravitz, who is principal deputy counsel.

How long is your term as director of the Office of Government Ethics?

A Five years.

Q And you are confirmed by the Senate?

A Correct.

Q By which President were you first appointed?

A George Bush.

Q And I believe you testified that prior to your tenure as director, you were in private law practice?

A That's correct.

Q Is this your first government position?

A Except for service in the Army.

Q Lo these many years ago?

A Right.

Q Is the Office of Government Ethics what would commonly be called an independent agency?

A By technicality, it is called a separate agency rather than independent agency but that's the

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terminology that's used in the statute, that it's a separate, executive branch agency.

Q You don't come under the direct supervision or authority of any other official of the executive branch, do you?

A That's correct, except in the general sense that all of us work for the President, I guess.

Q And you serve a fixed term of five years?

A Correct.

Q You don't serve at the pleasure of the President?

A Actually, a very good question, which there are a lot of arguments about. I mean, because the statute which created us was the result of a compromise, and the very name, the fact that we are not an independent agency but a separate agency was a compromise so as not to create any implication that the powers of the President were impaired. Likewise, whereas in a lot of agencies the term of years specifically says to serve a term of years and goes on to say may not be removed except for good cause or something like that, it's silent as to grounds for

removal.

So we've had discussions, academic though they may be, about whether the failure to specify any grounds means that the President's power to remove is unfettered or whether there is an implication that you have a five-year term means that he can't remove the director unless he has a reason.

Q To your knowledge, has a President ever tried to exercise authority to remove a director of the Office of Government Ethics?

A Not to my knowledge.

Q Is it the agency's position that your term is five years?

A Absolutely.

Q You testified earlier that OGE is not an investigative agency?

A Right.

Q You have no investigators on staff?

A Correct.

Q And other than with respect to financial disclosure matters, you have no authority to initiate independent investigations; is that correct?

A There are -- there's sort of some powers that -- I don't know how you would describe them, residual or whatever, but let me sort of describe and I think the answer is we still -- we would probably not ourselves do the investigation, but if, for example, someone at the Department of Agriculture engaged in, let's assume for the sake of argument, flagrant conduct in violation of the standards of conduct and for whatever reason the department refused to take any action, we do have authority to step in in that situation and initiate a proceeding pointed towards some sort of -- the action by us would be a finding that some action should be taken.

MR. O'CALLAGHAN: Off the record for a second.

(Pause.)

BY MR. PORTNOY:

Q Has OGE ever exercised that authority?

A We have not. And let me add that the example I gave was for an individual but it could also be systemic. In other words, it could be a problem that an entire agency had, not just for an

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individual.
Q So putting aside financial disclosure matters, would it be fair to say that OGE has never initiated an investigation?
A That's correct, right, because we don't conduct them, right.
Q Do you provide advisory opinions in some fashion?
A We publish opinions which for the most part interpret and define the standards of conduct.
Q Do your authorizing statute or regulations provide for agencies to address inquiries to you regarding the applicability or the interpretation of the ethics rules?
A Right. That's the way the system is set up, and we -- there's an ongoing dialogue between ourselves and the ethics officials throughout the executive branch.
Q Would it be fair to characterize your role in the investigation under discussion in the nature of rendering an advisory opinion to the Secretary of the Treasury?

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A That's pretty close. I mean, what we have described it as, is our analysis of the facts developed by the inspector generals with respect to -- or regarding whether those facts disclosed any violations of the code of conduct by the Treasury officials.
Q Would it also be fair to say that the only reason OGE became involved in this matter is because Secretary Bentsen requested that you do so?
A It was not only because he requested it, but it was more specifically because his DAEO was allegedly involved in the matters at issue, and therefore was not able to perform his normal function.
Q But to simplify my inquiry, OGE would not have become involved in this investigation had the Treasury Department not asked you to?
A That's correct.
Q And that request came first in March of 1994?
A Correct.
Q I believe you testified that the only

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specific request you received was the March 3, 1994 letter from Secretary Bentsen?
A That's correct.
Q Did you receive any other explanation as to why Secretary Bentsen or the Treasury Department wanted OGE's assistance?
A Not prior to receiving the letter. Afterwards, of course, there were discussions between my staff and officials at Treasury as to what prompted this.
Q What kinds of things prompted Secretary Bentsen to seek your assistance?
A And again, these were not conversations I had, but what was reported to me was that they were in a position where Dennis Foreman was possibly implicated. And so his normal source of advice on this subject was, you know, somewhat tainted, he'd have a personal interest obviously in clearing himself. And since this had received so much publicity and whatever, he wanted to have as independent and authoritative an analysis of the situation as he could get, so that's why he was

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calling on us.
Q And was it your understanding that Secretary Bentsen needed an independent and authoritative analysis in order to make personnel decisions, for example?
A That was certainly part of it, sure.
Q When Secretary Bentsen asked you through this letter and through subsequent conversations between the staffs at the Treasury Department and OGE to undertake this investigation, were any limits placed on your investigation?
A Well, first of all, we weren't doing the investigation. We were going to do the analysis. There were no limits placed on our role, other than you might say the ones we imposed on ourselves to make it clear that the IGEs were going to do the factual investigation and we would do the analysis.
Q You testified earlier, I believe, that you directed the IGs by giving them questions to ask and suggesting factual information that they needed to obtain.
A Correct.

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Q Did anybody in the Treasury Department or the Administration in any way suggest that there were subjects of inquiry that you should not pursue?
A No.
Q Were there any categories of violations that anybody in the Treasury Department or Administration indicated you should not consider?
A No.
Q Did anybody suggest to you in any way what conclusions you ought to reach?
A No.
Q In March of 1994, what was your understanding with respect to the pace at which Secretary Bentsen wanted the investigation and report completed?
A Only that he was eager to, you know, have it done promptly, but we had to make it clear pretty soon after that, that that was not going to happen and that we had no control over when the investigation by the IGs could proceed and then therefore our analysis could take place, because of the ongoing investigation by independent counsel Bob

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Fiske.
Q I'll come to that in a second but just to go back one step, did Secretary Bentsen impose any kind of firm time limit?
A No.
Q You just stated that your ability to oversee the investigation and conduct your analysis was impeded by the ongoing investigation by Independent Counsel Fiske?
A Correct.
Q Whose idea was it to contact Mr. Fiske and inquire whether he had any objection to your pursuing the investigation or report?
A It was ours.
Q Did the Administration in any way suggest to you that you should confer with the independent counsel?
A No.
Q And just to be absolutely clear, did Secretary Bentsen or anyone in the Administration suggest that your investigation and report ought to be delayed until the independent counsel finished his

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investigation?
A No.
Q Now, again with respect to time limits, following the completion of the portion of the independent counsel's investigation that was delaying your investigation and report, I believe Secretary Bentsen contacted you again?
A Secretary Bentsen? I don't think -- no, I don't think I had any contact with --
Q Just let the record reflect that I'm going to show the witness a letter from Lloyd Bentsen to Stephen Potts dated June 30, 1994. And it doesn't have a Bates number, which almost certainly means that it was part of the OGE production.
(Witness reviewed the document.)
A I forgot all about this. Right. Yes, I reviewed the letter and it does refresh my memory now that we received that letter shortly after June 30 from Secretary Bentsen.
Q And I would ask you also just to review the last paragraph of that letter. Does that indicate that Secretary Bentsen has a preference as to how

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fast the investigation be concluded?
A Right. We understood that there were going to be Congressional committee hearings and he wanted to have our analysis prior to his testimony.
Q But there's nothing in the letter or in any other conversation you had with Secretary Bentsen that you would consider a firm deadline; is that correct?
A No, and we made that clear. We responded to the Secretary and said that, you know, we couldn't guarantee that we would complete our work in time for that hearing.
Q And was it your position that the integrity of your work was more important than the timing of its completion?
A Absolutely.
Q So you would not have considered your investigational report complete before you felt that it was actually complete?
A Correct.
Q Do you know -- strike that.
Did you in any way communicate with the

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inspector generals' offices regarding your view that the investigation should remain open until it was complete?

A I'm not sure we expressed it in those terms and I didn't have any conversations personally. But I know the instructions to my staff and in the contact to the IGs was that we expected them to be extremely thorough and take whatever time was necessary to get the job done, but you know, move on it expeditiously. And there were a few instances where they came back to us with the transcript of testimony and upon our review, we felt like their questioning of the witness had been incomplete and we asked them to go back and ask additional questions, which they did.

Q So the time frame, although compressed, allowed you adequate time to question witnesses again if you deemed that necessary?

A It was done.

MR. O'CALLAGHAN: I'm sorry, you weren't questioning witnesses, though, right, just so it's clear.

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MR. PORTNOY: I beg your pardon.

THE WITNESS: The IGs, right.

BY MR. PORTNOY:

Q To clarify, allowed you to direct the IGs to take additional testimony.

A To request them. They didn't work for us, but we were in a very cooperative mode.

Q Is it your view that the inspector generals' offices understood that although there may have been outside forces that wanted this investigation complete, that they were to take as much time as they needed in order to do a complete and thorough job?

A I think they understood that because we were -- because, you know, we were reviewing the transcripts and where we had questions that we thought they should ask, you know, we would get back to them and say we really think in order to do our analysis, we need these additional questions answered. And I don't know of a case where they failed to go back and ask those additional questions.

Q Were there any witnesses that you wished to

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see or your staff wished to see interviewed that the inspector generals' offices declined to interview for any reason?

A No.

Q Were there any witnesses who -- strike that.

You just stated that you did not view the inspector generals' offices as working for you.

A Right.

Q So did you play any role in determining what personnel they would assign to the investigation?

A Not to my knowledge.

Q Or the resources they would devote to it?

A No.

Q Are you aware of any person or entity outside of the inspector generals' offices themselves that in any way determined what resources or personnel they devoted to their investigation?

A I'm not aware of any.

Q At any time during your dealings with the offices of the inspector generals or inspectors

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general, I suppose, did you have any concern whatsoever that the independence of the investigation was compromised by virtue of the personnel involved on behalf of those offices?

A I was receiving transcripts as they were being produced and delivered to us and was reading them, and based on what I was reading, I was very comfortable that they were doing a very thorough job.

Q Just to be specific, was there ever any indication to you that the independence of their investigation was compromised in any way?

A No, there was not.

Q During the earlier questioning, the name Francine Kerner arose. Am I correct that Ms. Kerner was affiliated with the inspector general's office at the Department of Treasury?

A That's correct, my understanding was she was part of the office of general counsel staff at Treasury, but then was assigned to work on this investigation with the inspector general.

Q During the course of the investigation and reporting period, did you become aware that

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Ms. Kerner had this potentially dual role?
A I was not aware of it until later, I mean after our report, I learned about the fact that -- I mean, I didn't know who Francine Kerner was until after we had submitted our report.
MR. O'CALLAGHAN: I believe he already testified to that earlier, the question was asked.
BY MR. PORTNOY:
Q You also I believe corresponded with a member of Congress on this subject?
A Yes, just in July of this year.
Q Let the record reflect that I am showing Mr. Potts a letter dated August 4, 1995 from Mr. Potts to the Honorable Charles T. Canady, chairman of House Judiciary Committee Subcommittee.
MR. O'CALLAGHAN: What's the date on that?
MR. PORTNOY: I believe I said August 4, 1995.
MR. O'CALLAGHAN: Okay, sorry.
BY MR. PORTNOY:
Q Do you recognize that document, sir?
A Yes, I do.

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Q Is that the document that you sent to Mr. Canady?
A It is.
Q And does that document reflect OGE's analysis of the propriety of Ms. Kerner participating in the investigation?
A It does.
Q What was your conclusion?
A We really had no reason to have a problem with it.
Q And today, sir, is there any reason that you would have changed your conclusion?
A There is not.
Q Were you aware, sir, that Secretary Bentsen received a draft copy of the OGE report on the 22nd of July?
A I'm not aware and I don't see how it's possible, because there wasn't a draft report on the 22nd of -- we didn't have --
Q I beg your pardon, I meant of the inspectors generals' reports to you.
A Oh, their report, I'm sorry.

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Q I beg your pardon.
A No, I'm not aware of that. I hadn't heard that.
Q So you played no role in determining whether that should or should not occur?
A Right.
Q I believe you testified earlier that during the course of the investigation you became aware that the White House in some fashion had received copies of the deposition transcripts?
A Right.
Q Do you have any knowledge as to who decided to transmit those transcripts to the White House?
A I do not know.
Q Were you consulted in advance?
A You mean about whether they should be -- no, no.
Q Putting aside for the moment concerns about the investigation itself, is there any reason external to the investigation that you can think of that the White House should not have had access to transcripts of depositions from this investigation?

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A I'm not sure I understand.
Q Let me go at it the other way. Do you have any reason to believe that the fact that the White House received copies of these deposition transcripts impeded, interfered with or affected your investigation and report in any way?
A As far as our analysis that we provided to the Secretary, I am positive it didn't impact on that.
Q So at least for the purposes of the investigation, you have no concern about the fact that these transcripts were transmitted to the White House?
A Well, insofar as our analysis that we provided Secretary Bentsen, it's not relevant to that because we didn't have anything to do with it, it wasn't a factor at all in the analysis, where we were talking about the behavior of Treasury officials.
Q Just one more area of inquiry, sir. You indicated that you had a series of conversations with Mr. Knight?
A Right.

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Q Who, I believe, is executive secretary to Secretary Bentsen?
A Correct.
Q You stated that you believed his call for promptness was business as usual?
A Correct.
Q So it was -- it's been your experience that everyone in the government always wants everything right away?
A Correct.
Q You didn't see anything unusual about that, did you?
A No, I was -- it was what I would expect.
Q You didn't see that as in any way an attempt to limit your investigation, did you, sir?
A No.
Q You also said that Mr. Knight understood from his first visit that neither you nor your staff would have any substantive discussions with him regarding the content of your report?
A Correct.
Q Did Mr. Knight have any objection to that

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limitation?
A I don't recall that he objected. He seemed to accept it and understand.
Q And in his subsequent dealings with you, did he respect that limitation?
A He did.
MR. PORTNOY: That's all I have. Thank you, sir.
MR. O'CALLAGHAN: I have a couple of follow-up questions. I'll try to be as quick as possible. I don't want to take up too much of your time.

EXAMINATION

BY MR. O'CALLAGHAN:

Q Just to follow up on Mr. Portnoy's questions, some of the issues, he asked you whether or not OGE would have looked into the possible improper contacts between the White House and Treasury officials, the report that OGE produced, was it July 30, 1994?
A Right, right, that's when we submitted our report.

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Q OGE wouldn't have gotten involved unless Secretary Bentsen had requested their involvement and you said yes, that that was true; is that right?
A That's right.
Q Did anyone else request OGE to get involved in reviewing the events that transpired?
A No.
Q Why don't you take a look at what's been Bates stamped 05409 and 05410. It's a letter on OGE letterhead, I believe signed by you. If you could take a look at the second page.
A It is, right.
Q And you've got a cc to Lloyd Cutler, counsel to President, cc on Jean Hanson, general counsel, Department of Treasury and to R. Kusinski, director of office of the ethics, Resolution Trust Corporation. In the second paragraph, it reads "Your letter asked for OGE's review and advice as to whether a meeting between three White House officials and Roger Altman, interim chief executive officer of the Resolution Trust Corporation (RTC) and deputy secretary of the Treasury violated any guidelines of

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government ethics, regulations or law."
Then you go on to say "various sections of Title 3 CFR entitled 12 CFR cited in your letter as possibly being applicable to this matter."
Did Congressman Leach request that the OGE conduct an investigation into this matter? Does this refresh your recollection?
A Actually, I don't -- the way we characterize it, and I don't recall exactly without seeing Congressman Leach's letter, but the way we talk about it, it says your letter asks for "OGE's review and advice" rather than an investigation. So maybe they were more knowledgeable in usual letters coming down to ask us to investigate and then we always have to go back and say we don't investigate, but we can give you advice about what the rules were that are possibly implicated, et cetera.
Q Was this request similar to the request that was made by Secretary Bentsen?
A It was similar in that it covers the same -- the same subject matter, but it is a little different in that they were -- it's been a while here

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so --
Q Take your time and review the document.
A Okay.
(Witness reviewed the document.)
In the letter, we went on to explain, as we had to Treasury when we first got Secretary Bentsen's letter, that we didn't do the investigations but in this case we were responding to Congressman Leach after we had already gone through that drill with Treasury. And so we explained that to him, that you know we've gone through that, that OGE staff was meeting with the IG offices at Treasury and RTC, so we were sort of laying all that out for him.
And also saying that we were -- this was all preliminary to something we were going to do in the future because we were putting any action by us in abeyance until we were notified by independent counsel that they had completed their part in the investigation.
Q I guess my simple question is, and it was kind of in response to your reply earlier, would a request by, say, Mr. Leach or anyone else in

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Congress, could that have spurred OGE to do a review of the actions that occurred?
A We would certainly have responded. We do respond to any Congressman or Senator's request for this kind of review, so -- and we also noted I think in here that someone -- let's see. Oh, that at least one member of Congress had contacted the IG at Treasury to ask for an investigation, so it might very well have been that we would have -- all of that might have played out, that if the IG had responded to that other Congressman by saying okay, we're going to go ahead and conduct it and then Leach had, as he did, asked us to cooperate with the IG, we would have done so and provided advice.
It probably wouldn't have been in exactly the same context and maybe not the same intensity, because they -- you know, it's kind of hard to figure out how it would have played out. Maybe they would have -- if the IGs had been doing it and they had run into the problem with Dennis Foreman and then they might have come back and asked us to play a more significant role.

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Q This was kind of a unique situation and you may have given review and advice to the House just like you did to the Department of Treasury?
A That's right.
Q That's all I was trying to clarify. I wasn't very effective in asking my questions, I apologize.
Did you ever provide the inspector general's office of the RTC or Treasury with the schedule of when you would have liked their report delivered to OGE, either verbal or written?
A No. Not a specific date. We were all -- both OGE and the IG shops were aware that we really should move this very promptly, because Secretary Bentsen and others were going to face having to testify before Congress.
Q And Mr. Portnoy had asked you whether you were aware that a draft copy of the report produced by the inspector general's offices of RTC and Treasury, asked you if you had been aware of whether or not a draft of that report had been delivered to Secretary Bentsen prior to --

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A To the issuance of our report.
Q Correct. Now that you've been apprised of that, do you have any reaction to that? Do you think that was proper for him to receive a copy of those drafts?
MR. PORTNOY: I would just like the record to reflect whether you're asking him for some sort of official ethics opinion or just an informal -- his informal view as an individual.
BY MR. O'CALLAGHAN:
Q Personal opinion right now.
A I mean, I haven't analyzed it in terms of anything. Thinking about it, I would prefer that it had not been done. It seems to me, just if I had compared it, I would not have expected anything. And I am very proud of the fact that OGE has a very strong record of not having information leaked out of our office. And so, you know, if I were the IG, I would have been concerned that information like that was leaked out while my investigation was ongoing.
Q And can you identify any specific concerns you would have about that, like why is that

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troubling?
A Well, I think any time you're conducting an investigation, you don't want -- while it's ongoing, you don't want information of what some people have testified to, for example, to be leaked out so that other people that might be questioned later, you know, get the benefit of knowing what somebody else said on the record, that kind of thing.
Q Do you think it's surprising that they gave a draft of this report to Treasury or people who might have been subject to the investigation or may have gotten access to this information?
A I would not have expected it to happen, no.
Q Would you have expected to have been notified of them transferring this information to Treasury before they did it, to notify you about that?
A Well, depends on the state of their conscience, I would expect. If they had a feeling they were doing something they shouldn't have been doing, I would expect them not to let me know.
Q And as far as your knowledge of the code of

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ethics and standards of ethics as director of the Office of Government Ethics, could you give an opinion as to the propriety of the transfer of that kind of information from draft IG report to the Treasury?
A I really don't have all the facts so I don't really think I'm in a position to give you an opinion.
Q I didn't expect you to, but I had to ask you the question.
A Right.
Q I would like to have you take a look at the document which bears no Bates stamp because it didn't have one when we received it. It's from the Department of Treasury, a one-page dated July 22, 1994, addressed to Mr. Stephen D. Potts. It's signed by John J. Adair, J as a middle initial, inspector general, Resolution Trust Corporation, and Robert P. Cesca, deputy inspector general, Department of Treasury.
Have you ever seen this document before?
A I'm sure I have.

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Q Do you recall when you first saw it?
A I don't, but actually there's a date up at the top, July 22, 1994, so it was toward the end of the -- this process of giving the report to Secretary Bentsen.
Q In the letter, the first sentence reads "On March 3, 1994, Lloyd Bentsen, Secretary of the Treasury, requested the Office of Government Ethics, OGE, to conduct an investigation to determine the ethical propriety of contacts made between officials of the Resolution Trust Corporation, RTC, the Treasury Department and the White House with respect to RTC's work with Madison Guaranty Savings and Loan Association."
Do you agree with the characterization that I just read back to you, that OGE was requested to conduct an investigation to determine the ethical propriety of contacts made between officials of the RTC, Treasury Department and the White House?
A I think that's a pretty fair characterization of what Bentsen's March 3 letter said, yes. We didn't think -- we thought that was --

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you know, there was a little misunderstanding on the Secretary's part about us --
Q The investigative aspect?
A Right, the investigative aspect.
Q But as far as the three -- any of these that you were reviewing would be RTC, Treasury Department and the White House; is that correct?
A Right, although -- well, our focus was on the Treasury officials. In other words, we made it clear that we were not rendering any opinion on the propriety of conduct by the White House officials.
Q Okay. I just wanted to make that clear because it doesn't appear like that in this letter.
A Right, exactly.
Q We're here to get the facts.
A Exactly.
MR. O'CALLAGHAN: I have no further questions.
MR. PORTNOY: I just have one very brief one.

EXAMINATION

BY MR. PORTNOY:

Q You've discussed some unease at the fact that Secretary Bentsen received a draft of the IGE's report of July 22.

A Right.

Q Do you have any reason to believe that the conveyance of that draft report to Secretary Bentsen in any way affected either the investigation or the report that you drafted?

A I do not.

MR. PORTNOY: Thank you, sir.

MR. O'CALLAGHAN: Off the record.

(Whereupon, at 12:30 p.m., the deposition was concluded.)

STEPHEN D. POTTS

CERTIFICATE OF NOTARY PUBLIC & REPORTER 114

I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

My Commission Expires MARCH 14, 1998

DEPOSITION OF PATRICIA M. BLACK
IN RE: S. RES. 120

THURSDAY, OCTOBER 12, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of PATRICIA M. BLACK, called for examination pursuant to notice of deposition, at 9:50 a.m. in Room 124 of the Dirksen Senate Office Building before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

MICHAEL CHERTOFF, ESQ.
Majority Special Counsel
MICHAEL P. O'CALLAGHAN, ESQ.
Majority Associate Special Counsel
NEAL E. KRAVITZ, ESQ.
Minority Principal Deputy Special Counsel
JAMES S. PORTNOY, ESQ.
Minority Associate Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

FRED W. GIBSON, JR., ESQ.
Senior Counsel
Office of the Inspector General
Resolution Trust Corporation
1735 North Lynn Street
Room 1132
Rosslyn, Virginia 22209
On behalf of the Deponent.

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PROCEEDINGS

Whereupon,

PATRICIA M. BLACK

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. CHERTOFF:

Q Ms. Black, if you would just spell your full name for the court reporter.

A Patricia, P-a-t-r-i-c-i-a, M., Black, B-l-a-c-k.

Q Ms. Black, before we proceed, let me just give you some general ground rules that we're following in all the depositions. You understand that this deposition is being conducted pursuant to Senate Resolution 120, which establishes a special committee to investigate Whitewater Development Corporation and certain related matters.

One portion of that resolution specifically authorizes an investigation and public hearings into whether the report issued by the Office of Government Ethics on July 31, 1994, or related transcripts of

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deposition testimony were improperly released to White House officials or others before their testimony to the Banking Committee last year, or were used to communicate to White House officials or to others confidential RTC information related to Madison Guaranty Savings and Loan Association or Whitewater Development. That's what the focus of today's deposition will be.

How did you learn about this deposition? Did you receive a subpoena or request directly, or were you informed by someone at the agency?

A First I was informed by my counsel, Fred Gibson, that my deposition was likely; and then I believe we got a letter to that effect faxed to us last Friday?

MR. GIBSON: It was October 6, I believe.

BY MR. CHERTOFF:

Q At some point before today, have you been asked to produce documents in your possession related to the subject matter I have described to you to the RTC for purposes of having them furnish it to the committee?

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A No, we have not. We furnished documents directly to the committee.
Q When you say "we," you mean --
A The RTC inspector general's office and those included my personal files.
Q So anything you had in your personal files that was relevant to the subject matter, as I have described it to you, you turned over to the RTC IG for purposes of having them furnish the documents?
A I am counsel to the RTC IG.
Q Yes. When I say "them," I mean the institution, the office.
A The office, yes.
Q This deposition is in anticipation of a public hearing to be held, I guess, commencing either later this month or at the beginning of November, and there's a pretty fair likelihood you will be asked to testify at the hearing. I can't tell you for sure one way or the other. As you know -- I'm sure you've been through depositions before on one side of the table or another -- you'll be testifying under oath. I'll be asking you a series of questions. If there's

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something you don't understand, please let me know. I'm not -- I'm going to ask you not to guess or speculate about things unless I make a specific request for you to guess or speculate.

The stenographer is going to prepare a record of the questions and answers. The deposition will be treated as confidential to the committee until the hearings begin. Once the hearings begin, some or all of the deposition may be publicly released.

Before the hearings, you will get a letter from the committee that will tell you when you can come to the Senate to review the transcript of the deposition for purposes of making any corrections. I should tell you that if you make substantive corrections as opposed to ministerial corrections, that can be a basis to call you back and depose you on those as well.

If you are going to be called to testify at the public hearing, you will be given a copy of your deposition transcript four days in advance of your testimony so you can review it before you come.

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I know you have counsel here; just for the record, Mr. Gibson.

MR. GIBSON: My name is Fred Gibson. I'm a senior attorney with the RTC office of inspector general.

BY MR. CHERTOFF:

Q Now, counsel may object to the form of the question, actually counsel for either the attorney asking questions or your own counsel. Let us get those objections on the table, and then you should go ahead and answer unless you receive an instruction not to answer on the grounds of privilege or relevance. If we can't work such an objection out amongst ourselves, ultimately the committee chairman has the power to make the resolution of those issues.

Are there any questions about what I've said?

A None.

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Q Where are you currently employed?

A I'm currently employed as counsel to the inspector general, Resolution Trust Corporation.

Q Where did you go to law school?

A At American University.

Q When did you graduate?

A 1976.

Q Can you give us a general history of your legal career since you graduated from law school?

A Sure. I was an attorney adviser to the General Services Board of Contract Appeals from the time of graduation through May of 1979, I believe. At that time I went to the Department of Housing and Urban Development as a trial attorney. I worked there in that position for, I guess through 1982. In 1982, I moved to a different unit within the office of general counsel, still at HUD, and still staying as a trial attorney. In 1986, I became counsel to the inspector general, still within the office of general counsel at HUD.

In October of '90, I left HUD and came to

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the RTC IG's office as counsel, where I remain.
Q Who brought you over as counsel to the RTC in 1990? How did you come to get that job?
A I was hired by John Adair, the inspector general.
Q Was he new in the position at that point, or --
A He had been there about six months. I believe he came in April of that year.
Q Now, can you tell us, is the inspector general at RTC a statutory inspector general?
A Yes, sir, he's Presidentially appointed.
Q What is the relationship in terms of the reporting between the inspector general of the RTC and his superiors?
A He is under the general supervision of the head of the agency, as are all Presidentially appointed IGs, although he's appointed by the President and removable only by the President. In this case, the head of the agency currently is the acting CEO, John Ryan. And there is also an oversight board for the RTC, and that oversight board

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is chaired by the Secretary of the Treasury.
Q As counsel to the inspector general, to whom do you report?
A I report -- my immediate superior is the deputy IG, Steven Switzer, and the inspector general himself. I report to those people.
Q Is there an office of general counsel at the RTC?
A Yes.
Q Do you report to the general counsel?
A No.
Q Are you part of that office for any purpose?
A No.
Q So for purposes of your FTE, your evaluations and your supervision, you are all within the inspector general's component?
A Yes, exclusively.
Q Has that been true for the period of March of 1994 through August 1994?
A That has been true my entire tenure at RTC.
Q In terms of your preparation for this

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deposition, have you met with anybody other than your counsel?
A Yes, there was a meeting last Friday where a number of us who were involved in this investigation got together and just went over our recollections as to the series of events that we thought would be relevant to the depositions.
Q Who was present at the meeting?
A Other than myself, Steven Switzer; John Adair for part of the meeting but not the whole thing; Clark Blight; my counsel Mr. Gibson; Joan Dwyer, who is a special agent involved in the investigation; and Sarah Herlihy, another special agent.
Q Who called the meeting?
A I believe it was you, Mr. Gibson.
Q Your counsel?
A Yes.
Q Is it your understanding that Mr. Gibson in fact has been representing other witnesses from the IG's office of the RTC?
A Yes, that is correct.

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Q Did you prepare or review any document in connection with this meeting in anticipation of the depositions?
A I did not prepare any documents. I reviewed a number of documents which had been submitted to the committee previously by our office.
Q Do you recall what those documents were?
A My entire personal file, the entire supplemental production of documents that our office made; the production out of the personal files of Mr. Adair, Mr. Switzer, I believe Mr. Blight; and miscellaneous documents in our investigative file.
Q Have you talked to anybody from the IG's office who has already been deposed by the committee since their deposition?
A Yes.
Q Have you talked to them about what the deposition -- what occurred in the deposition?
A In general terms, not in a great deal of specifics.
Q With whom did you talk?
A I talked to both Mr. Switzer and Mr. Blight

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in general terms, and well, I talked to my counsel of course.
Q Putting aside your counsel.
A Right.
Q And when you say "in general terms," what do you mean?
A Tenor of the deposition, just general terms about what went on.
Q Did you discuss with them specific questions that were asked or answers that were given?
A There were -- at least anecdotally, yes.
Q Is there anything you recall anecdotally that was discussed?
A I can't recall any specific instance. I remember -- I remember that there were comments about a given question that might have been asked, but I really can't recall any specific ones.
Q Have you had occasion prior to March of 1994 to conduct any investigations or be involved in any investigations of the RTC IG's office in which the office was working in tandem with or in conjunction with the Office of Government Ethics?

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A Since?
Q Before March of 1994.
A No.
Q Since August of 1994, have you had occasion to work on any investigations as part of the RTC IG in conjunction with the Office of Government Ethics?
A No.
Q Let me direct your attention back to March of 1994. Did there come a time that you learned that the inspector general's office at RTC might become involved in an investigation involving contacts between Treasury and RTC officials and the White House?
A Yes.
Q How did you learn that?
A The first inkling I had of it came from one of two places, and I do not recall from which place it came. Either I got a phone call from Francine Kerner, counsel to the Treasury inspector general, or directly from Jane Ley, Office of Government Ethics. One of those two called me and said the Treasury IG has been asked to provide assistance to OGE in

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investigating the White House contacts issues, and we believe we will need your help. I cannot recall which of those two individuals called me. I heard from both of them fairly early in '94.

Q Now, you mentioned Francine Kerner, counsel to the Treasury IG. Is the Treasury IG a statutory inspector general?

A Yes, it is.

Q That means that he also -- he or she is also appointed by the President?

A In this case, yes.

Q Now, before March of 1994, did you know Ms. Kerner?

A Yes, I did.

Q And you say she was counsel to the inspector general of the Treasury Department?

A That is correct.

Q Do you know whether, as of March of 1994, she had a reporting relationship to anybody outside of the inspector general's component of Treasury?

A Yes, the Treasury IG counsel is located within the office of general counsel of Treasury, not

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within the IG's office.

Q Based on your just general knowledge about the way inspectors general work in the government, which obviously you've seen, I think, at a couple of agencies, is it common to have the counsel to the inspector general component in an agency where there's a statutory inspector general actually be a member of the component of the general counsel's office?

A It is not unique to Treasury. It is unusual.

Q Are there other agencies that have that?

A Yes, the Department of Defense does. I believe HHS does, although -- but in both of those cases, there are entire units which are devoted exclusively to IG work that are outside, I believe, the IG's office.

At the time that I was at HUD, I was -- the counsel's function there was located within the general counsel's office, and I was head of a unit that was devoted -- that worked on that. And that has since changed. A number of Presidentially

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appointed IGs had that relationship at one time and had moved away from it. There are few left.

Q At the time you received the first notification or indication that you might be involved in an investigation concerning these contacts, what had you heard about this in general?

A I had heard what had been reported in the press. I had seen the testimony of Mr. Altman, not at the time it was given but since in news clips where he had used the phrase "heads up" in referring to his discussions with the White House.

Q After this initial contact, what was the next thing that happened concerning the possibility of having an investigation into these contacts?

A The Office of Government Ethics, Jane Ley specifically, asked to meet with us in a preliminary fashion, meet with some folks from the RTC inspector general's office. And we did that in March.

Q And where was that meeting?

A That was in our offices in Rosslyn.

Q The RTC offices?

A RTC inspector general's offices, yes.

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Q Do you remember the date of the meeting?

A March 22.

Q Do you remember approximately when during the day it was?

A I do not.

Q Who was present?

A From the inspector general's office, I was there, Clark Blight was there, Steve Switzer was there and Jack Adair was there.

Q From Treasury?

A No one.

Q And from OGE?

A Jane Ley and a man whose last name is Rick, I believe his first name is Stuart.

Q As of that point, in March of 1994, what was your understanding of why the RTC inspector general's office was going to be involved in this investigation?

A My understanding was that the Treasury inspector general felt that it would be necessary -- and the Office of Government Ethics as well felt that it would be necessary to interview a number of RTC

employees. They believed that since the RTC had an inspector general, that we should be involved in that process. And the Office of Government Ethics specifically indicated that it wanted us involved in the process.

Q Why was Treasury not represented at the meeting on March 22?

A Treasury met separately with the Office of Government Ethics.

Q Do you know whether there was a reason that there were separate meetings between OGE and Treasury and OGE and the RTC?

A No, I do not.

Q As best as you can, can you tell us what occurred at this meeting on March 22?

A It was a very preliminary meeting where the folks from the -- it was held at the request of the OGE personnel. They wanted to explain to us what their situation was, specifically that they were a unit of government which had no investigative arm and they had been asked to render this opinion. Obviously they needed investigatory work done for

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them before they could do that; therefore, they were asking the assistance of the inspectors general of the two agencies in developing those investigative leads.

We talked in general about the sorts of things that they would need in order to -- the sorts of data that they would need in order to render their opinion, if you will, the elements of the case that we would be establishing and how they would like for us to work with them.

Q What was your understanding under this plan of the identity of the individual or agency to whom you would be reporting when you completed your work?

A Our understanding of the agency who would be utilizing our report was that it would be the Office of Government Ethics.

Q Was it your understanding that, at this point in time, in March, that you would also be submitting a report or raw data to the CEO of the RTC?

A I don't know that that issue ever came up. I mean, in general we do report to him.

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Q Was it your understanding, at that point in time, that you were going to actually prepare a report to go to OGE, a set of factual findings to go to OGE, or merely that you were going to submit raw data to OGE?

A Again, I don't know that that came up at that preliminary meeting. I just don't recall whether it did.

Q Finally, as of that point in time, March 22, 1994, what was your understanding of how you would be working with the Treasury inspector general's office in conducting the investigation?

A Our expectation at that time was that we would be working very closely with them.

Q Is there anything else you can recall about the meeting on March 22?

A At that point, we learned that the independent counsel had specifically requested the OGE to delay its work, so we knew that at this point, at the March meeting, this was pretty preliminary and that they would not be starting their work until such time as the independent counsel gave them a go ahead.

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Q Either on March 22 or before or after, one or two weeks, did you have any contact with anybody at the Treasury IG's office concerning this proposal to have an investigation into these contacts?

A I would periodically get phone calls from Ms. Kerner, both immediately before and afterwards, so yeah, I probably did during that period of time.

Q After the meeting on March 22, what's the next significant event that happened in terms of this investigation into White House Treasury contacts?

THE WITNESS: Could I talk to my counsel for a moment?

MR. GIBSON: Off the record.

(Discussion off the record.)

MR. GIBSON: We can go back on the record. Thank you.

BY MR. CHERTOFF:

Q Go ahead.

A I guess the next significant event that I can recall occurred sometime in mid-to-late June. I can't give you a date, but it was before June 23. At that time, the speculation, and perhaps even a

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statement by the independent counsel, was that their investigation was rapidly nearing a close. Also, at that time it was publicly known that at least the House and probably the Senate were going to hold hearings sometime in July or August on this issue, so we all became aware that we were likely to have our investigation begun and that we needed to move quickly when that occurred.

Again, I started getting phone calls both from OGE and from Ms. Kerner at Treasury, saying we're expecting a declination at a certain point in time. That did not come at the expected point in time. It did come sometime around the 30th, 29th or 30th of June.

I became concerned at that point about Ms. Kerner's role. My specific concern was that this investigation was centered in large part upon Jean Hanson's role. Jean Hanson was the general counsel of Treasury. My understanding of the reporting chain in Treasury was that Ms. Kerner reported, not perhaps directly to Ms. Hanson, but certainly through the chain of command directly to Ms. Hanson.

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In addition, there were concerns about the deputy general counsel, Mr. Foreman, at Treasury and his involvement in rendering an ethics opinion, some fact that was critical to the investigation.

It was evident in my conversations with Ms. Kerner that she was talking a great deal with the office of general counsel in Treasury, personnel in there, and that, in one instance, I believe she talked directly to Mr. Foreman.

Q When you say "talking," do you mean concerning the issues of this investigation?

A Yes. And I don't know what the substance of those conversations were, but she would say, you know, "I have told the general counsel's office this," and at one point she mentioned talking to -- mentioned Mr. Foreman's name specifically in conversation with me.

I therefore contacted Jane Ley at the Office of Government Ethics and asked her, are you aware that Ms. Kerner works for the office of general counsel of the inspector general. She told me she was not. I told her that caused me some concern in

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this specific case because of the allegations dealing with the office of general counsel. It also caused her concerns. And I said you're going to be the end user of this product, you're the ethics official involved in this case. I will leave it to you to deal with this situation. And she said that she would do so.

Shortly after that or at the same -- well, before I called Jane Ley, I raised the issue also with our inspector general, Mr. Adair, and expressed my concerns to him, asking him whether he thought it would be appropriate for me to raise the issue with Ms. Ley, and he said absolutely. My understanding is that he then also raised the issue with Mr. Cesca, who was the deputy inspector general of Treasury and acting inspector general at that time. I guess that was the next series of events.

Q Now, let me just take this step by step. This series of conversations with Ms. Kerner and your conversation with Ms. Ley and Mr. Adair occurred before June 23?

A Yes, that is my recollection.

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Q Can you tell us, did the conversations with Ms. Kerner that gave rise to this --

MR. PORTNOY: I beg your pardon. I couldn't hear the preface to your question, occurred before June --

MR. CHERTOFF: 23.

MR. PORTNOY: Thank you.

BY MR. CHERTOFF:

Q Can you tell us whether this series of conversations with Ms. Kerner occurred during June?

A Yes, I believe they did.

Q And can you give us some sense of the context in which she indicated she was talking to people in the office of general counsel of Treasury; in other words, what kinds of issues you were discussing with her in which she mentioned this fact.

A The issues were pretty general at this stage. I cannot recall specifically what they might have been. I know there were general issues concerning the investigation, how we would go forward with it.

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The thing that concerned me was the depth of the communication, it was apparently continual; in every conversation I had with her it would come up.

Q Did she mention particular names, other than Mr. Foreman on one occasion, did she mention particular names of attorneys at the office of general counsel she was talking to?

A I believe she mentioned Ken Schmalzbach.

Q Anybody else?

A Possibly, but I have no recollection.

Q Would you say that she mentioned Mr. Schmalzbach on several occasions specifically as someone she was talking to?

A On more than one occasion. I don't recall the number.

Q Did she at any point indicate to you that she was reporting to them or keeping them informed?

A No, no. I just -- my impression was that there was a lot of communication with the office of general counsel.

Q Did she indicate she was seeking their advice?

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A I don't recall that.

Q On the occasions she mentioned Mr. Foreman's name, what do you recall concerning the context in which his name came up?

A I cannot recall the specifics of the conversation. I recall the name because my reaction was you shouldn't be talking to someone who is a critical fact witness outside the scope of the investigation. The investigator shouldn't be doing that. And although I do not recall that the nature of the conversation was regarding any specifics of the investigation other than it did involve the investigation generally, we expect to go forward, the mere fact that the communication was going on concerned me.

Q Did you have any conversation with Ms. Kerner during this period of time before June 23 in which you expressed to her your concern about her contacts with the general counsel's office?

A I believe I took those concerns directly to the Office of Government Ethics and asked them to -- quite frankly, I sought their advice on it and to my

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IG, not to Ms. Kerner directly. At some point I did talk to her, but I believe that was after this point.

Q Well, jumping ahead, when was the occasion that you talked to her about it?

A Sometime after the 23rd, and this would have been either late June or early July, and I cannot tell you at which point. I became -- well, it was some point after my IG, Mr. Adair, talked to the Treasury IG, Mr. Cesca, acting IG, and I believe the issue arose at that point. And Ms. Kerner said I can assure you that I would never do anything inappropriate, I'm here to represent the inspector general, and even though I'm within the office was general counsel, I'm cognizant of those issues and would deal appropriately with them.

Q She said this to you?

A Yes.

Q Did she seek you out to make this statement, or was it in a conversation?

A During that period of time, I was talking to her almost on a daily basis, and it arose within one of those conversations. And I said, you know, I

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appreciated that, there was a time when I was serving as counsel to the inspector general and I myself had been located in the office of general counsel. I knew it was possible to keep one's proper client interests in mind even though you were situated elsewhere, but that in this case I thought it was particularly awkward for her because the head of the office of general counsel and her deputy were involved as major fact witnesses and subjects of the investigation.

Q Let me direct your attention now again back to the period before June 23. During that period of time, did you have discussions with Ms. Kerner concerning the scope of the investigation that was going to be pursued?

A Yes, yes, we did.

Q What were those discussions?

A The discussions were primarily oriented toward what OGE needs to establish its case, to the factual underpinnings for its opinion. There were also discussions early in the investigation, and again this could be early July versus the last week

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or so in June, about getting documents that the agencies had -- RTC and Treasury had already produced either to the Office of Independent Counsel or to various Congressional committees, and discussion about getting information from the agency's general counsel's office on their ethical requirements and any opinions, regulations, handbooks that they might have that would be relevant to OGE issues.

Q Was there discussion in the period before June 23 about which witnesses would be interviewed?

A No, I don't believe so.

Q Was there discussion concerning -- before June 23 that you recall concerning the handling of transcripts or investigative files?

A No, not that I recall.

Q Now, again, still focused on the period before June 23, you indicated you had had a conversation with Ms. Ley about Ms. Kerner's communications within the office was general counsel of Treasury. At any point thereafter, did Ms. Ley ever have any further conversation with you about anything she might have done to pursue your opinion?

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A Yes, she indicated that she had spoken to people at the IG's office. I do not know whether that conversation occurred with the IG or with Ms. Kerner or with both. And at some point she indicated to me that a memorandum of understanding had been entered into between IG and general counsel's office, which she felt adequately addressed the situation and clarified reporting lines for purposes of this investigation.

Q When you say "IG" in this previous answer, you mean the Treasury inspector general?

A Yes.

Q Did you ever see that memorandum?

A Yes, I did.

Q I'm going to show you what we have as Bates number 10804. This is a memorandum dated June 27, 1994 for Jean Hanson from Robert Cesca. Is this the memorandum you referred to as the one that addressed this issue about the relationship between the Treasury inspector general and Ms. Kerner?

A Yes, it is.

Q Did you ever have any discussions with

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Ms. Kerner specifically about this memorandum?
A I do not believe I did.
Q Did you have any discussions with Ms. Ley about the substance of this memorandum?
A Yes, I did.
Q Tell us about that.
A As I said before, she indicated to me that a memorandum had been agreed to by the general counsel in the IG's office that would, she felt, address the situation adequately. And I asked her for a copy of that, and she gave me one.
Q Did you ever have any conversation with Ms. Kerner in which you indicated to her that you had a copy of the memorandum?
A I do not recall such a conversation.
Q I want to direct your attention to the second paragraph where it says "Neither Ms. Kerner nor her staff will communicate any information about the substance of this inquiry without specific authorization from the inspector general."
What was your understanding about what was meant by the term "substance of the inquiry"?

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A I would look at that -- and I did at the time -- look at that statement as a fairly broad attempt to wall Ms. Kerner off from the general counsel's office to assure her independence, and I would view that as -- speaking about the substance of this inquiry, I would view that as covering virtually anything going on in the inquiry, not status, not when we expect to be done, but given that communication of fairly minor items, who you're interviewing when, whether you're going to interview someone or not, before that decision is made and before the time comes to schedule those, that indicates where you're going with an investigation and reflects any substance of it, so a very broad interpretation.
Q So your understanding under this ethics wall is that it would have been okay for Ms. Kerner to say, for example, we need to schedule room such-and-such for such-and-such a time, or we need, Ms. Hanson, you need to come and show up at 9:00 on Tuesday morning, but not to get into any discussion with the office of general counsel in advance of such

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actual scheduling concerning what witnesses would be taken in what order?

A That would be my view of it, yes. I was not consulted on the memorandum, I was not a part of entering into this memorandum, so I'm looking at it as an outsider.

Q Did you have any conversations with Mr. Adair after you had initially raised the issue of Ms. Kerner with him about his discussions with Mr. Cesca?

A Yes, I did.

Q Tell us about that.

A Immediately upon conclusion of the conversation between Mr. Adair and Mr. Cesca, Mr. Adair came into my office and indicated that he had contacted Mr. Cesca and expressed his concern. He expressed concern that Ms. Kerner was reporting through the chain of command in the general counsel's office, he had expressed concern that there would be a substantial natural human tendency for a person in that situation to talk to those in the general counsel's office, that there might be a residual

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concern in such a person's mind about ratings.

Those are the sorts of pressures which the inspector general community as a whole have cited from time to time, I shouldn't say the inspector general community as a whole, I should say individual inspectors general who have moved the counsel function from their general counsel's office to their own office, the IG's office. When doing so, they have expressed exactly those concerns, so these were generalized concerns, although they were obviously in a very specific context.

And Mr. Cesca's response was that, after all, he is rated by the Treasury Secretary, he is under the General Service Act, under the IG Act of the Secretary, so he didn't see that the situation with his counsel was all that different.

Mr. Adair had indicated that he, Mr. Adair, had suggested to Mr. Cesca that he consider using me as his counsel for the duration of this and that he, Adair, would be willing to enter into such an agreement with Cesca because he didn't think the interests of the two offices would diverge at all.

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Mr. Cesca was uncomfortable with that and Mr. Adair said to me, I can understand he wants his own counsel, and that's -- I understand that, and that is just the way it's going to be.

Q Was there ever any discussion about the possibility of Mr. Cesca bringing an attorney in from some other component of Treasury to be designated as acting counsel for the IG?

A I don't believe so.

Q Did you ever learn from any source that Mr. Cesca had discussed the issue of Ms. Kerner's participation with anybody else besides Mr. Adair?

A With the possible exception of OGE, and as I said, I cannot -- I know that those discussions went on with someone in Treasury, I believe someone within the office of the general -- within the office of the inspector general, and I would not be at all surprised if that were Mr. Cesca. And I know something went on there but I don't recall exactly who Jane said she talked to, or if she even told me who she talked to.

Q You mean the discussion between Jane Ley

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and someone at the inspector general's office?

A That is correct. So I know that that contact occurred at some point.

Q Have you learned that Mr. Cesca discussed the issue of Ms. Kerner with anybody inside Treasury, outside of the inspector general's office?

A I have no knowledge of any discussions that might have occurred there.

Q Now, let me --

A We were fairly much on the periphery of this. We had a concern, we took it to OGE and we took it directly to the IG, but we certainly didn't have the authority to dictate how they would handle it.

Q Let me still keep your attention directed to the period before June 23. In that period of time, did you have any conversation with anybody concerning the way in which work product of the investigation would be handled, meaning transcripts of depositions, notes of interviews and any investigative files?

A Not that I can recall.

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Q Before June of 1994, how many investigations, approximately, had you been involved in either participation or counseling on for the RTC inspector general?
A Ballpark estimate?
Q Ballpark estimate.
A 100, 150 direct involvements. Indirect for more than that.
Q Typically did those investigations conclude with a report submitted to somebody?
A Yes.
Q What was the practice of the agency, again before June of 1994 --
A Let me back up and say that certainly some -- many cases are closed without a report. We do a preliminary look at an allegation, there's no evidence whatsoever to support it, a case is closed so that would not necessarily have a report. In fact, it wouldn't have a report. This was clearly not going to be that sort of case.
Q Focusing on situations where there's enough of an issue to be looked at so that there is going to

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be a report, and again in the period before June of 1994, what was the practice of the RTC inspector general's office regarding the underlying raw data, how confidentially it would be held during the course of the investigation and up until the report was completed?
A We handle that data extremely confidentially. It is used only within the IG's office, except to the extent that you need to disclose something to a witness to get a reaction.
Q In the course of the investigation?
A In the course of the investigation, to get a reaction. Very occasionally we will find something that will require immediate management attention within RTC. You find out an employee is embezzling, you obviously don't want that employee to continue in that position. You have to go to management before your investigation is completed. That sort of information might be taken to management. That is done on a very case-specific basis and on a need-to-know basis.
Q Who makes the decision about when raw

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information like that ought to be transmitted out of order, so to speak, or you know, before the completion of your investigation?

A That would be made certainly at a supervisory level. In the field, I would expect it would be made by the regional inspector general. In headquarters, it would be made either by the head of our headquarters office or by someone in the Rosslyn supervisory chain in the investigative office, such as Mr. Blight. Typically it would be Mr. Blight, who is our assistant inspector general for investigations.

Q Did you have any conversations before June 23 with Ellen Kulka concerning this investigation?

A I do not recall having any such conversations.

Q I'm going to direct your attention to what's been previously received by us as Bates 15226 through 15229, which is a letter from Ellen Kulka to Dennis Foreman, dated June 14, 1994. And I want to direct your attention particularly to page 3, the first full paragraph.

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A I have not seen this document before.

Q I want you to read the paragraph and I want to ask you whether you have any knowledge in the period before June 23 of discussions concerning the disclosure to the White House of RTC documents.

A Okay.

(Witness reviewed the document.)

MR. GIBSON: May I suggest we go off the record a couple of minutes while the witness has the opportunity to familiarize herself with the letter as a whole.

MR. CHERTOFF: Sure. I just want to ask her if she knows anything about the subject matter.

MR. GIBSON: Off the record for a few minutes while we do that.

(Recess.)

BY MR. CHERTOFF:

Q Directing your attention to the first full paragraph on page 3, before June 23, do you remember hearing any discussion concerning the issue of provision of certain RTC documents to attorneys from the White House counsel's office in connection with

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the independent counsel's investigation?
A Other than what had appeared in the press about discussion at least of certain RTC documents by Ms. Hanson and Mr. Altman, no, I do not. At some point, and I believe it was after the 23rd, I was either told or read that the White House and Treasury had exchanged documents, documents that the White House had produced to the Senate and Office of Independent Counsel in-house and documents that Treasury had produced. I cannot recall when I heard that, but it was at about that time that I received a request from Treasury to obtain RTC documents which had been produced under like circumstances.
Q When we talk about documents being exchanged, we're talking about now the underlying documents involving the contacts themselves --
A Yes, I believe that is correct.
Q -- back in 1993 and early 1994.
Now, let me direct your attention to June 23. Did you have a meeting on that day regarding this investigation?
A Yes.

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Q Where was it and who was present?
A It was a meeting at the offices of the Office of Government Ethics in downtown Washington. I went with Mr. Blight from the IG's office, RTC IG, and Jane Ley, Mr. Rick and Ms. Wilcox -- Leslie might be her first name, but I'm not sure -- was there from OGE.
Q What was the discussion?
A The discussion was similar to the one that we had back in March, only it was now of more immediate import. By that time, it was very obvious that Mr. Fiske was winding down his investigation and literally any day was expected to decline prosecution, at which time we would get the go-ahead -- the Office of Government Ethics would get the go-ahead to do their investigation.
They gave us some documents at that time which detailed the ethics rules that were in effect in the government at that period of time that were relevant to our investigation, in their opinion, regulation statutes. And they went over the sorts of questions that they would have, what they would be

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looking for in terms of whether an ethics violation could be established or not.

Q Now, in this meeting, did they discuss with you whose conduct was actually going to be the subject of their review and their opinion?

A To a degree, yes.

Q What did they tell you?

A They told us that, in determining whether or not ethics rules had been violated, they would look at the intent of the parties who were communicating, both those who were from Treasury and those from the White House, what was the intent in giving the information, what was the intent in seeking it, that that could be critical to the ultimate determination.

Q So as of that point, June 23, it was your understanding that the --

A And, of course, what was communicated by whom.

Q As of June 23, the date of this meeting, it was your understanding that OGE was going to be rendering a judgment on the conduct of both Treasury

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officials and White House officials?

A OGE was going to render an opinion as to whether ethics rules had been violated, and in order to render that opinion, they had to look at such conduct.

Q Was anybody at Treasury at this meeting on June 23?

A No.

Q Was there discussion on June 23 about the time frame within which this evaluation would be completed?

A We were certainly aware from the outset that we had a very tight time frame because of the hearings that were being scheduled at that time. I don't know that there was any discussion on the 23rd that a report would be expected on X date.

Q Why was the timing of the hearings, in your mind, a factor in the time frame within which the investigation would be completed?

A Again, this may have occurred subsequent to the meeting on the 23rd, but certainly between then and the beginning of July, the first week sometime in

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July, we had dates on which the hearings were expected, I believe, or certainly weeks that they would be expected.

At some point the Treasury IG's office made it very clear to us that the Secretary wanted the report -- and by this time, we were certain there would be a report, by the way. You were focusing on that issue earlier -- wanted the report made to the Office of Government Ethics in sufficient time for an opinion to be rendered by those hearings and certainly by the time he testified, he wanted the resolution.

In addition, from our perspective, the IG's perspective or at least the RTC IG, we have, as all inspectors general have as one of their obligations, the need to keep Congress and the head of the agency informed of issues that may be of concern to them. And we also felt that there would certainly be benefit to Congress in having this report complete ideally prior to the holding of their hearings, and that it would not be of particular benefit to anybody if we came out four months after the hearings had

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concluded and said oh, you're wrong because we found X, Y and Z.

So we also felt some need to do that, if possible.

Q Was there discussion within the RTC IG's office about the practical effect of having this kind of a deadline?

A Yes, we were very concerned about the effect of having a short deadline, just can it all be done. We had a lot of interviews that we were going to have to conduct. The report-writing process itself takes time.

Q Now, in terms of the concern that you said the IG's office had about wanting to get something in to Congress, am I correct that that militated in favor of completing something at least while the hearings were ongoing and before the Congress had concluded the examination?

A Yes.

Q It didn't require that the report be submitted days in advance of the hearing, though?

A No, it did not.

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Q Who set the deadline for when the report should be submitted to the Treasury Secretary?
A It is my understanding that the Treasury Secretary communicated that to the IG.
Q Mr. Cesca?
A Mr. Cesca. And I do not know that Mr. Bentsen personally did that, but it came through his spokespeople.
Q And did Mr. Cesca or anybody from the Treasury IG's office have any conversations about this deadline in getting the report to the Treasury Secretary with anybody from the RTC IG's office?
A Sure, they were very open about the fact that they felt they had to get the report done by that time.
Q What was your response to them?
A Our response was we understand why the Secretary would want it by that time, we agree that it would be helpful for the Congress to have it, at least during the course of their hearings. We will do that if possible, but we are very concerned about the tight time frame just because of the volume of

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work we have to do.
Q Is there anything else that occurred during the meeting of June 23 that you haven't told me that you recall?
A Not that I can recall at the moment.
Q What was the next significant event that occurred in connection with this investigation?
A Again, during this period of time, there were pretty constant phone calls going on, but I guess the next significant event was that Mr. Fiske in fact declined prosecution, finding no evidence of criminal wrongdoing. And I believe on the same day Mr. Bentsen formally requested that the investigation begin.
Q Did Mr. Fiske find no evidence of criminal wrongdoing, or did he simply say that there was not sufficient evidence to prove a case beyond a reasonable doubt?
A I believe you are correct that he said there was not sufficient --
Q And then --
MR. PORTNOY: It's not the same thing?

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MR. CHERTOFF: I don't think so.
(Laughter.)
BY MR. CHERTOFF:
Q After Mr. Fiske had indicated he wasn't going to proceed with a criminal case, what's the next thing that happened?
A There was an immediate request by the Secretary to his IG to begin its investigation, to OGE to do likewise. And I believe on the same day a request went from the Secretary to Mr. Ryan, the acting CEO of RTC, asking him to ask us to assist the Treasury IG in its investigation. On that same day, we got that request from Mr. Ryan. I believe all of this happened on June 30. And the first meeting of the investigative teams occurred on that day as well.
Q Where did that take place?
A I did not attend that meeting, and I am not sure where it was held.
Q Who attended from the inspector general's office at RTC?
A I believe that that was attended by Mr. Blight, Mr. Sherman, Ms. Dwyer and Ms. Herlihy.

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Q Were you present in any meetings --
A All of those people on the investigative staff. By the way, I have a chronology here that I'm referring to and I see, according to that, they met at one of the Treasury buildings.
Q Between June 23 when you had your meeting with the OGE and June 30 when this meeting with Treasury occurred, did you have any meetings yourself within RTC IG concerning issues raised by this investigation?
A I think that is likely, but I don't have any recollection. It probably occurred on a fairly informal basis, someone walking into somebody else's office and calling another person to come in. That probably occurred. I would imagine Mr. Blight talked to his investigators.
Q On June 30 or shortly thereafter, after the meeting on June 30 between Treasury and RTC IG people, did you talk to anybody who had been at the meeting concerning what had occurred at the meeting?
A Again, I think that likely, but I have no specific recollection.

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Q Do you have any recollection during the last week of June of the issue arising concerning the White House's desire to get transcripts or information about the inspector general's investigation?
A Either the last week in June or very early in July, yes.
Q When did you first learn about that issue?
A Again, either the very end of June or the very beginning of July.
Q And how did you learn about it?
A I believe that that issue arose in the course of the June 30 meeting and that Mr. Blight communicated that to me.
Q What was your understanding from what Mr. Blight told you about what this issue was?
A The treasurer of the White House counsel's office had also been asked to investigate this issue on behalf of the White House.
Q Now, that had nothing to do with OGE?
A That had nothing to do with OGE, no.
Q Go ahead.

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A They were acting as White House counsel. And OGE had not requested them to undertake that investigation. And my understanding was that there had been a request from White House counsel's office to Treasury's office to sit in on interviews, if possible, that being the preferred method; lacking that, at least to get transcripts for their investigations.
Q Do you know who at the White House relayed this request to Treasury IG's office?
MR. PORTNOY: Just to clarify, I'm not sure that she testified that it was the IG's office.
BY MR. CHERTOFF:
Q I'm sorry. Do you know who at the White House relayed this request to Treasury?
A Prior to July 5, I don't believe I knew that.
Q Prior to July 5, did you know whether anybody in Treasury had taken a position on the White House request?
A Yes.
Q And again this is before July 5.

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A Before July 5.
Q What did you know about that?
A The investigators -- and again, I believe it was Mr. Blight -- indicated that at least Ms. Kerner was favorably disposed to that, according to what they had heard, but I don't know that they heard that from Ms. Kerner.
Q When you say "favorably disposed to that," you mean to having the White House sit in or having the White House get transcripts?
A At least one of those things, and I do not know that I knew at that time which.
Q And it's your understanding that that occurred, this is something Mr. Blight learned during the course of the June 30 meeting?
A That is my recollection.
Q Again focusing your attention before July 5, did you hear from anybody who had been present at the June 30 meeting, that at some point in time, a Jane Sherburne, who is the special counsel to the White House, had indicated she was acting as an investigator doing a report for OGE?

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A It becomes rather hard to separate what I knew prior to July 5.
Q At any time.
A I knew that on July 5, yes.
Q At any time did you learn that there was a point at which Jane Sherburne had indicated she was acting as an investigator doing a report for OGE?
A Oh, I'm sorry, for OGE?
Q Yes.
A I misunderstood your earlier question. I thought that you said for the White House, I'm sorry.
Q No, no.
A I never heard that, no.
Q Did you ever hear anybody say that they had heard Jane Sherburne was acting as an investigator, saying she was doing a report for OGE?
A No, I don't recall any such statement.
Q Let me direct --
A Acting as an investigator, yes, but not for OGE.
Q Your understanding is, if she was acting as an investigator, it was for the White House?

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A Yes.
Q To your knowledge, did anybody at OGE ever ask the White House to participate in the investigation that the RTC inspector general's office and the Treasury inspector general's office was conducting?
A Not to my knowledge, no.
Q Let me direct your attention to July 5. Did there come a point on July 5 that you had a meeting concerning this investigation?
A Yes.
Q Where did that take place?
A There were two meetings on July 5, both of them at Treasury. The first one occurred at 10:00 in Mr. Cesca's office. The second occurred at 4:30 in Ms. Kerner's office.
Q What was the purpose of the first meeting?
A The purpose of the first meeting was to outline with some specificity what we were going to do during the investigation, how we were going to handle it; to the extent possible, who we were going to interview on a preliminary basis to get going.

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Q Who was present at the meeting at Treasury?
A From Treasury, Mr. Cesca, Mr. Cottos, Ms. Kerner. All Treasury IG personnel. From RTC IG, myself, Mr. Blight, Mr. Switzer and Mr. Adair.
Q Can you tell us, as best as you can recall, the substance of the --
MR. PORTNOY: I would just like the record to reflect I believe the witness is reading this off a chronology rather than remembering it.
THE WITNESS: Oh, I remember it.
MR. PORTNOY: You do? Okay. That's fine.
THE WITNESS: I wanted to make sure I didn't omit anybody but I could virtually tell you where they were sitting.
BY MR. CHERTOFF:
Q Well, tell us as best you can what was discussed at the meeting.
A As I said, we were discussing how we were going to do this. We recognized we had a very tight time frame. The Treasury IG personnel were extremely concerned about that.
Q Concerned in what way?

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A They wanted to get this report done by the time they had been requested to have it done. We expressed concern at that meeting as to whether it was -- whether it was doable, not that it was not a -- not that we didn't understand the goal but whether it was doable. We also discussed on a preliminary basis who might be interviewed.

Mr. Cesca indicated that he would arrange through Mr. Knight in the Treasury office department to have people made available for interviews. The secretary -- again I believe through Mr. Knight -- had communicated that they would do everything possible to make people available quickly.

The issue arose at that meeting -- it became evident that -- at that point that Ms. Kerner had been in communication with White House counsel's office concerning the exchange of documents.

Q When you say "exchange of documents," what do you mean?

A Well, "exchange" is probably a poor word. The need to get documents from the White House that might be relevant to our investigation, so it was a

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one-way street.

In addition, Ms. Kerner indicated that she was going to be meeting that day -- if not that day, very soon, the expectation was that day although we did not have a time -- with Ms. Sherburne in order to arrange to have a White House personnel interview and to obtain the documents, relevant documents from the White House. That was the first time anyone from the RTC IG's office, I believe, was aware of that.

Q Aware of what?

A Aware that this meeting was going to occur.

Q Later that day?

A Yes. And at that time also the issue of the White House's ability to send some -- one of the people from the counsel's office to sit in on interviews was raised.

Q Who raised it?

A I believe Ms. Kerner did.

Q What did she say?

A Just that the White House wanted to sit in on the interviews because they were conducting their own investigation and this was relevant to their

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investigation. And the uniform reaction, the uniform and strong reaction from the RTC IG personnel was no, we cannot do that, we're not conducting a joint investigation with them and we cannot do it.

Then the issue of provision of transcripts --

Q Before we get to that, still on the issue of having someone sit in from the White House counsel's office, what was the position of the Treasury people, if any, on that type of arrangement?

A Ms. Kerner was not opposed to it. I do not recall anybody else taking a position other than the RTC personnel.

Q Did Ms. Kerner offer any explanation of her view as to why she wasn't opposed to having the White House people sit in? Was there any discussion from her on that subject?

A I don't know that there was discussion at this meeting as opposed to the one at 4:30.

Q At --

A As I said, we all reacted very strongly, no.

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Q What was the reason for your reaction of no?

A That is completely contrary -- when I say "that," having any third party sit in on investigative interviews is completely contrary to the standard method of conducting an investigation. It was very apparent to us that this investigation would be scrutinized very closely by Congress, by --

Q As indeed it has been.

A -- the media. As it indeed has been, that's right. It was equally apparent to us and the position was strongly advocated at this meeting that although we conduct all investigations by the book, this one, above all other investigations, had to be conducted by the book in order to give any validity to whatever we found one way or the other.

Q At this point in time, were you aware that individuals who would have to be interviewed for purposes of your investigation included members of the White House counsel's office itself?

A Yes, we were.

Q Now, still keeping your attention on the

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morning meeting at main Treasury, what discussion was there then concerning the provision of transcripts of interviews or depositions to the White House?

A The RTC personnel uniformly opposed that as well.

Q Did Ms. Kerner offer any suggestions as to what her view was on providing transcripts?

A Again, she thought that that was a reasonable request on behalf of the White House and that it might well be a reasonable accommodation on the part of the IG's offices.

Q And the RTC IG position was uniformly against it?

A Uniformly.

Q What was the reason you were opposed to it?

A We do not provide reports of investigative activity, which is the standard way we write up interviews, outside the investigation unless there is a compelling need to do so. Again, I gave you earlier the example of finding out that an RTC employee is embezzling money and needing to go to management to stop that, we might well do that under

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those circumstances, but it is a rare situation where we would do that.

It's just simply an inappropriate investigative technique, if you will. You keep things in an investigation confidential.

Q What else do you recall about the meeting in the morning at main Treasury?

A I mentioned to you before would be write up a report of activity, the agent takes an interview, takes notes, writes up what was said, sometimes writes up a statement for the individual to review and sign. By this point, it was apparent that that would not be the method that would be used in this investigation. I will also add that that is not an exclusive method.

Another method that is utilized but rarely, quite frankly due to cost, is to take a sworn statement from somebody. Obviously one has to have a court reporting service present to do that, and that involves cost. Another method might be to take and type up a transcript and have the witness review it and confirm it.

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By that meeting, it was -- I can't recall if it was decided at that meeting or if it was just confirmed at the meeting, it was decided that we would attempt to do sworn depositions of all the witnesses for two reasons: One, that is faster than writing up an interview or statement; and two, when one writes up an interview, one is by definition paraphrasing what the individual says. Given the nature of this investigation, we thought it behooved us to let the witnesses tell their stories in their own words so there could be no question as to what was said.

Q Now, during the discussion in this morning meeting, was there any talk about difficulties that Ms. Kerner was having negotiating with the White House counsel's office?

A I believe so.

Q Can you tell us about that?

A The conditions under which the documents would be provided to us were being hashed out. It was a time where everybody was extremely busy. There was some difficulty sometimes getting through to

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people, but we had, I believe, asked on July 1 by letter to Mr. Cutler, "we" being the two IGs, to have White House cooperation in providing documents and making people available.

That, by the way, is a standard method of proceeding under the IG Act if an IG wants cooperation of another federal entity. We have subpoena authority for documents but not for another federal agency. We are not allowed to subpoena another federal agency. So you ask, and we did. As of the 5th, we didn't have the documents yet, so there was some difficulty, and Ms. Kerner was negotiating with the White House at that point regarding conditions.

Either our deputy or our inspector general, or both, at that meeting said if you are doing that, our counsel ought to be involved as well. And at some point during that meeting, Ms. Kerner and I left the room and placed a phone call to Ms. Sherburne to indicate that I would be present at that meeting and again to set a time, which I do not believe we had yet.

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Eventually during the course of that meeting, we got the time, we got through or exchanged messages and the meeting was set for 4:30 and it was confirmed that I would be attending that as well.

Q Was there any discussion in this morning meeting on July 5 about a White House effort to link the provision of witnesses or the furnishing of witnesses to be interviewed with the IG's giving transcripts to the White House?

A Either during that meeting or during the 4:30 meeting, and I suspect during the morning meeting, that issue may have been obliquely raised in the sense that the White House wants to cooperate; if they are cooperating and providing witnesses, perhaps we ought to cooperate and provide material to them as well.

Q Who made that suggestion?

A I don't know that it was a suggestion as opposed to perhaps a statement of rationale by Ms. Kerner.

Q And you think this occurred at the afternoon meeting?

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A Morning meeting I believe, but I might be wrong, it might be the afternoon meeting.

Q Was there discussion in the morning meeting concerning whether White House personnel would be interviewed or deposed under oath?

A Yes, I believe there was. We wanted to take all the depositions under oath --

Q And did you hear --

A -- including the White House people.

Q In this meeting in the morning, did anyone report as to what the White House's view on that was?

A Either during that meeting or the afternoon meeting, and I suspect both, there was a statement that there was some concern on behalf of the White House counsel about that. And I heard it directly from them in the afternoon meeting.

Q We'll get to the afternoon meeting in a minute. Finally, let me ask you this about the morning meeting. Was there a discussion in the morning meeting concerning the possibility if the White House would go to OGE with its own investigative report and seek an OGE opinion on that

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investigative report?
A I have a recollection of having heard something to that effect at some time, but I cannot tell you when, and my recollection is a vague one.
Q Let me see if I can refresh your recollection. I've got a set of notes here from someone who was evidently a participant in the meeting. It's Bates numbers 452, 453, 454 for identification, and it appears to be a record of someone who was at the meeting at main Treasury.
Let me ask you if you recognize the handwriting.
A No, I don't recognize this.
Q I will read you an excerpt of this and then tell me if this refreshes your memory. "OGE does not expect a report from the White House. If given oral report would not issue opinion. Also will not render an opinion on Lloyd Cutler's testimony."
Does that refresh your memory about that being discussed at the morning meeting on the 5th of July?
A As I said, I have a vague recollection but

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I'm afraid I can't get more precise.
Q Is there anything else you can remember about the morning meeting at main Treasury as you sit here, apart from what you've told us?
A Well, as I said, we were getting a preliminary list of witnesses. There was the agreement with the statement by Mr. Cesca that he would arrange through Mr. Knight for provision of all the Treasury witnesses. Someone from the RTC IG's office, probably Mr. Blight, said we will arrange directly with the RTC witnesses to make them available for interview.
We began to discuss the ordering -- well, we did discuss the ordering of witnesses, and we concluded that a logical progression would be to interview the RTC people first, and then the Treasury and White House people subsequently.
We also, I believe at that meeting, indicated the depositions would be taken under oath and that each witness would receive a copy of his or her deposition for review and correction.
Q Now, was the understanding that the copy

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that each witness received would be for the witness only to look at, and it would then be returned to the deposing agency?

A Well, the understanding -- first of all, Treasury said we will contract for the court reporter and make all the arrangements for that to happen. Quite frankly, the understanding, and I believe I expressed it, was that we can ask for a witness to keep confidential what is said to us. And, you know, that applies whether it's in written form or verbal, but we have to recognize that we cannot force them to do so, and we certainly believed that they would share it with counsel if they were represented.

Q Their own counsel?

A Their own counsel, absolutely. So we recognized that we could not stop people from talking to each other. We could ask, and that we would do so.

Q Was the understanding that they would mail their transcripts back when they were finished correcting them?

A Or bring them back, return them, yes.

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Q Now, let me direct your attention to the afternoon meeting at 4:30 with Jane Sherburne. Where did that take place?

A That took place in Ms. Kerner's office in main Treasury.

Q Who was there from Treasury?

A Ms. Sherburne, Ms. Cheston -- Sheila Cheston, I believe -- Ms. Kerner and myself.

Q How long did the meeting last?

A A couple of hours, I believe, perhaps as late as 7:00.

Q Tell us, as best as you can recall, what occurred in the meeting.

A The meeting began at 4:30, a little bit later; the White House people were late in arriving. And we immediately began discussing the issue of provision of documents, first off.

Q You mean from the White House to the investigators?

A From the White House to the investigators. The attorneys from the White House, both of those women are attorneys, pointed out that it is highly

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unusual for the White House to be providing documents, which were pretty obviously confidential documents, documents detailing occurrences within the White House, outside of the White House, which we acknowledged, and that they wanted to cooperate with this investigation in every way and that therefore they would do this.

However, they did not want these documents to be handled in anything other than the strictest method of security, that they did not want multiple copies being made. They just expressed extreme concern about this and pointed out that it was, in fact, a very meaningful event.

During the course of the investigation -- of the meeting, I'm sorry, we agreed that, as counsel to both IGs, agreed that we would keep these documents highly confidential, that they would be stored in secure locations, the locations that were specified were a safe in Ms. Kerner's office -- Ms. Kerner said that she felt that she needed a copy of the documents -- and otherwise under lock and key.

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We the RTC IG have what we call grand jury rooms where we store evidence and those also are under lock and key, and I did not feel that I needed a copy of these documents, but that our investigators would keep their copies under lock and key in that fashion.

We, I believe, agreed to have two copies, no more than two copies, one for each set of investigators and one for Ms. Kerner.

Q After you discussed the issue of the White House providing documents, what was discussed next?

A Next came the issue of provision of witnesses, and in what fashion. And I believe Ms. Kerner as well indicated that the investigators wanted to take sworn depositions of everybody, RTC employees, Treasury employees and White House employees.

There was concern expressed by one or both of the White House attorneys present. Their concern was stated that, simply as attorneys, they did not particularly like the idea of clients having multiple sworn depositions floating around, which as an

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attorney I understood. However, as an attorney for an inspector general, I contended that we needed the depositions to be under oath, that under the IG Act we have authority to place people under oath and that we felt we should certainly use it in this instance. And they agreed to that. They were not particularly happy about it but they agreed to it.

Also at this point the issue of attending the depositions was raised.

Q When you say "issue of attending," you mean having White House attorneys attend the deposition?

A That is correct.

Q Who raised it?

A If I may back up, prior to -- I told you the White House people arrived late. Ms. Kerner raised it prior to the meeting with me, stating that she did not -- that she viewed the White House counsel's office as similar to another IG in conducting this investigation and that we were -- we the two IGs were doing a joint investigation, and she was not adverse to treating the White House similarly.

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I said no, they are not an IG, they are not statutory, they do not have the degree of independence that the IGs have, and we have no intention of conducting any kind of a joint investigation with them. We cannot do it.

During the course of the meeting, Ms. Kerner referenced that again, but I do not know whether she raised the issue first or whether Ms. Cheston or Ms. Sherburne raised it. I can't recall.

Q What was the discussion about this?

A The attorneys from the White House, one or both of them, again -- well, I shouldn't say again.

The attorneys from the White House expressed a concern that they had this investigation to do, that if they asked to interview, particularly RTC employees but even Treasury as well, but certainly with RTC employees, that was the focus of their concern, it would be reported as the White House pressures the bureaucrats again. That had been the nature of several reports that had appeared already, and they were faced with that on the one

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hand and the need to gather information for their investigation on the other hand.

Quite frankly, I understood their problem, but I had no intention of buying into it, and I told them that. I told them that I understood their problem but that if we -- and I was speaking for the RTC inspector general at that point -- if we agreed to have them sitting in on the interviews, that would be contrary to our standard method of conducting investigations and that I thought that that would pose a worse problem, not only for us but ultimately for them, than their problem of otherwise accessing the information.

And I just flat out told them if they wanted to interview RTC employees, you know, we would communicate that on their behalf to the RTC, that if we could facilitate through that communication their contacting employees we would do that, but if they wanted to interview them, they had to interview them themselves. They could not -- I was adamant they could not --

Q Did Francine Kerner take a position during

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this portion of the meeting?

A Her position was that she understood the request. She would be willing to treat them as another IG, but I believe she also indicated that she just did not think that was going to happen.

Q Let me ask you this. What was your understanding of how Ms. Sherburne and Ms. Cheston related or how they fit into the White House counsel's office at this point in time.

A I believe they had been in private practice with Mr. Cutler and came over with him fairly recently to the White House counsel's office. They were attorneys within the White House counsel's office and they were doing the investigation for the White House counsel's office.

Q Now, there is no inspector general of the White House; correct?

A Correct.

Q Was it your understanding -- let me withdraw the question.

Your understanding is that Ms. Sherburne and Ms. Cheston were reporting to the White House

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counsel; correct?
A That is my understanding.
Q It was also your understanding that, among the other individuals who would become subjects of this investigation in terms of their contacts, were other individuals part of the same office; correct?
A That is correct.
Q And those individuals such as Mr. --
A Were or had been.
Q Take Mr. Sloan for example. Was Mr. Sloan at the time of this meeting on July 5 a member of the White House counsel's office?
A I believe he was. I would have to go back and check.
Q Was Mr. Eggleston a member of the White House counsel's office?
A I believe so.
Q And these were individuals whom you expected would be interviewed or deposed during the course of the investigation?
A That is correct.
Q These were individuals who were reporting

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to the same White House counsel that Ms. Cheston and Ms. Sherburne were reporting to; correct?
A To the best of my understanding of the organization of that unit, yes.
Q Did Ms. Cheston and Ms. Sherburne, during the course of this meeting on the 5th of July, indicate to you that they were in separate quarters, segregated and secure in their "investigative work," and inaccessible to the other members of the White House counsel's office?
A I don't recall any discussion about the physical or otherwise organizational segregation.
Q Did it seem to you that --
A I don't recall any discussion about that period, segregation or lack thereof.
Q So they didn't say look, we are really like a separate IG's office, off by ourselves secure and separate and walled off?
A No.
Q Did it occur to you, in the course of that meeting, that their position in relationship to, let's say, Mr. Eggleston and Mr. Sloan, was

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comparable to that of Ms. Kerner in relation to Ms. Hanson and Mr. Foreman?

A Quite honestly, I didn't think about that. My reaction was no, an unqualified no.

Q After you had rejected the possibility of them sitting in on the interviews -- actually, let me withdraw the question and ask something further.

Was it your understanding that in the course of interviews of the RTC witnesses concerning the contacts between White House and Treasury officials and RTC officials, it would be likely that, to some degree, there would be questions concerning the substance of the referrals that were being talked about?

A Yes.

Q Was it your understanding on this meeting on July 5 that that substantive information about the content of the referrals was a matter of great sensitivity to the RTC in terms of their own investigation?

A If you're asking me was I aware of that on the 5th, the answer is absolutely. If you're asking

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me did I discuss that with them --

Q I'm asking if it was in your mind.

A Certainly.

Q And in fact, you understood the whole point of the investigation, the very thing that was being investigated in 1994, was whether this confidential information had made its way over to the White House counsel's office where it could then be transmitted to the President or others in the White House; correct?

A I was acutely aware of that, yes.

Q Is it fair to say therefore, that in your mind on July 5, 1994, was a desire to avoid, in the course of your investigation, doing the very thing that you were investigating as being possible wrongdoing the previous year?

A Yes.

Q Now, having rejected the notion of the White House people sitting in on the interviews that were being conducted by the inspectors general, what was the next thing that was discussed?

A The next issue that arose was, well, from

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the White House attorneys; if we cannot sit in in the interviews, can we get the transcripts in a timely fashion, which is as you are getting them.

Q And what position did you take on that?

A No, again.

Q What position did Ms. Kerner take?

A She again thought that was a reasonable accommodation. Yes, she thought that it was a reasonable accommodation, that they would get the transcripts during the course of the investigation.

Q What was the discussion about this issue?

A I took precisely the same stance that I had taken with regard to attendance at the deposition, which was, I hate to be bureaucratic with you, but we are doing this by the book. I've talked to my client about this, the inspector general, he says no. My strong recommendation to him is no. I believe that that would give a terrible appearance if, during the course of the investigation, we were transmitting transcripts. It is contrary to the way we conduct investigations and we would not be a party to it.

Q What was the articulated reason from the

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White House lawyers as to why they wanted to get the transcripts?

A They did not think that they could go and interview the RTC witnesses without being accused of pressuring them.

Q Did they tell you --

A And I said I understand that, but the answer is still no.

Q Did they tell you in this meeting, the White House lawyers, that they were conducting their own investigation of White House personnel to see if there was wrongdoing?

A That was my understanding, that yes, that they were. They said that they were conducting an investigation on behalf of the White House counsel's office.

Q Did they tell you they were going to take their own depositions of White House personnel?

A They told me they would be interviewing White House personnel.

Q Did they make the interview notes available to you?

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A No, nor did we ask.
Q So when they raised the possibility of getting transcripts from the inspector general's work, they didn't do it in the context of a reciprocal offer to make their notes of interviews available to you?
A Not to my recollection, I don't think so.
Q At any point in time from June 30, 1994 until August 5, 1994, to your knowledge, did any of the White House counsel attorneys ever invite or suggest to any of the inspector general's personnel that they come in and sit in on interviews that the White House counsel's office was giving of people?
A No.
Q Was there any discussion, back to the July 5 meeting, of Bernard Nussbaum's attorney?
A At the meeting there was. Obviously we needed to interview Mr. Nussbaum. We were having difficulty reaching his counsel. Strike "we."
Francine Kerner was attempting to reach Mr. Nussbaum's counsel and was having difficulty doing so. And either Ms. Cheston or Ms. Sherburne

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provided us with his name and number. I believe she gave two names, a primary attorney and someone else to call if you couldn't get the first one.
Q After the discussion of the White House transcripts, the White House request to get transcripts of the inspectors general interviews, what else was discussed at this meeting?
A I believe there was methodology -- we discussed methodology of making people available.
Q When you say "methodology," you don't mean the methodology of your strategy for interviewing, you mean scheduling mechanics?
A I mean scheduling, who we call to get people scheduled and where they would come to be deposed.
Q About how long was the discussion in the course of this meeting concerning White House people sitting in on the interviews conducted by the inspectors general and concerning the issue of the transcripts being provided?
A That was a fairly lengthy discussion, and it was something which came up on more than one

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occasion.
Q So it was revisited during the meeting?
A Yes.
Q How was it concluded at the end of the meeting?
A It was concluded with me saying no on behalf of the RTC IG, and I said if that is to be countermanded, it will have to be countermanded by my IG. Quite frankly, I don't think there is a chance in the world that he will do that, but I thought they might contact him and ask. They never did.
Q Did they say they were going to do so?
A No, they did not.
Q What was Francine Kerner's final word on the subject?
A She was not adamantly opposed. She recognized that the RTC IG was adamantly opposed and it was concluded with it being out of her hands.
Q Is there anything else you can recall concerning this meeting on July 5 that you haven't told us about?
A Not that I recall.

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Q When you left that meeting, was it your understanding that transcripts of the interviews conducted by the inspectors general would not be provided to the White House?
THE WITNESS: One moment, may I?
MR. CHERTOFF: Sure.
MR. GIBSON: Off the record.
(Discussion off the record.)
MR. GIBSON: Thank you. Back on the record.
THE WITNESS: If I may make more complete answers to your previous two questions, which were what was Ms. Kerner's attitude, and in essence, is there anything else I recall about the meeting. At one point in the discussion of provision of transcripts to the witness --
BY MR. CHERTOFF:
Q To the witness or to the White House?
A I'm sorry, to the White House, to the White House. Ms. Kerner was describing her position on the matter and she made a remark which vividly sticks with me. At that point, the attorneys from the White

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House were somewhat frustrated with me, and Ms. Kerner made the statement the difference between Pat and me is that she is here solely representing the interests of her client. And I found that an unusual statement and I remember it.

Q Was she smiling when she said that?

A Yes.

Q What was your understanding -- do you have any understanding or sense of what she meant by that?

A I was taken aback, and I didn't know what to think. As an attorney, that's what I do.

Q Did anybody react to that?

A Not really, no. It was a statement that was made.

Q Your understanding was that Ms. Kerner's client was the inspector general's office of Treasury?

A That was my understanding.

Q Do you know, is Ms. Kerner a career employee?

A I believe she is.

Q Do you know how long she's been at

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Treasury?

A I believe she came in '93 sometime. I can't tell you when.

Q Do you know where she was before?

A Commerce, I believe.

Q Did she ever indicate to you how she came to be over at Treasury?

A No.

Q Now, after this meeting on July 5, what's the next -- let me ask you, did you become involved in the interviewing process yourself?

A I never conducted any of the interviews. I would sometimes talk to the agents about questions to be asked. The agents would call me. I would speak with them fairly much on a daily basis. They, for example, asked me for some -- to draft up some advisement to the witnesses. They wanted to tell the witnesses not to talk about what they had talked about during the course of their interview and to keep that confidential.

However, they were also aware that there were other investigations going on. These same

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people were being called up to the Hill to be deposed by both the House and the Senate, and they didn't want anything that they said to cause these people to believe they couldn't talk to --

Q Investigators?

A To other investigators, so they asked me to draft something up, which I did, and you will see that, at the end of the interviews conducted by the RTC agents, there is a fairly standard paragraph in there, we ask you to keep your interview and information you have given to us confidential but that doesn't mean you can't talk to other investigators about the underlying facts.

Q I would like to focus your attention now in the period after this meeting on July 5. Let me direct your attention to July 11. Did you have a meeting concerning this investigation on July 11?

A Yes.

Q And who was present at the meeting?

A At that meeting for the RTC inspector general, I attended, Mr. Switzer attended, Mr. Adair attended. Mr. Blight did not.

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From Treasury, Ms. Kerner, Mr. Cottos and Mr. Cesca.

Q And what was the purpose of the meeting?

A That meeting, about which my recollection is not as clear, quite frankly, as the one on the 5th, was more of a status report, more discussion about who else we need to interview, what are we getting, when are we going to be -- particularly with Treasury folks, we were very concerned about when we were going to get this thing done.

Certainly by that point there was some discussion of what will the report look like physically, and there was a discussion of most likely we will do it in a chronological format, that we ultimately used, with bullets on dates and what happened on given dates.

Q Was there any discussion in the meeting concerning the handling of transcripts of interviews or depositions?

A I do not recall any such.

Q In the two-week period after July 5, which would take us from July 5 until, let's say,

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approximately July 20, and including this meeting on July 11, did you have any conversations with Ms. Kerner in that two-week period in which she indicated she was still discussing anything to do with the investigation with members of the Treasury office of the general counsel, other than simply scheduling people to show up for interviews?

A Scheduling; we were also during this period getting documents still from the two agencies and I was getting some from the RTC and she was getting the documents from Treasury. At some point, I became aware, before the 20th, that they had -- that Treasury, that Treasury IG, Francine, had requested legal opinion from general counsel's office concerning Treasury ethical rules and structures.

At some point during that period of time, I want to say on the 17th or 16th, I got -- I was out of town at that point but I took a computer with me and I was in electronic contact with the office. And I got an E-mail from Mr. Switzer indicating that OGE had asked us to obtain a similar opinion, an opinion as to what the ethical requirements were and copies

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of documents pertaining to ethical requirements and confidentiality procedures.

My office, my deputy drafted and signed a request -- OGE drafted, I think, substantial parts of it -- to say exactly what they wanted, and we transmitted that to Ellen Kulka. So I knew she was doing -- she was -- Francine was doing something similar on Treasury's side.

Q Other than that, did you have any awareness during this two-week period of any contact she was having with attorneys at the office of general counsel of Treasury concerning the progress of the investigation?

A No.

Q Who was being interviewed, who was going to be interviewed?

A No.

Q Let me direct your attention to an E-mail which was produced that's, for identification, Bates number 625318. That appears to be an E-mail from you to Mr. Adair and others. It says "talked to Jane Ley who indicated she would look at transcripts as we did

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them so we should get those to her. Lou is following up on that." Also she said she talked to Fiske who "'looked shocked' that we are under the tight deadline which we have."

A Yes.

Q Do you recall a conversation on or about July 13 with Ms. Ley concerning these issues?

A Yes.

Q Tell us about that conversation.

MR. PORTNOY: Could I have just a second to track this document down.

(Pause.)

MR. CHERTOFF: I'll lend you mine for the time being.

BY MR. CHERTOFF:

Q What do you remember about the call?

A I did talk to Jane Ley. I do not recall who initiated the call. She wanted to look at the transcripts as they were completed and gotten back to the inspectors general for a couple of purposes: One, we had this very tight deadline and she did not want to wait until the end of the investigation and

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get a pile of paper a foot-and-a-half high (indicating) to go through in a short period of time; and two, if we needed to do any follow-up interviews, ask any follow-up questions of the witnesses, it obviously would be helpful to have the Office of Government Ethics looking at those transcripts and directing our attention to certain facts in the investigation. So she wanted to see the transcripts as they were completed, and we said that's fine, we can arrange that.

Q Was that a decision that you made, that you ran by the inspector general?

A I don't recall. This E-mail may have been my method of doing that. I don't recall -- I don't remember.

Q You certainly gave notice in the E-mail.

A Uh-huh.

Q Now, in the handling of these deposition or interview transcripts --

A We were aware -- we intended at the outset to give these transcripts to the Office of Government Ethics. We thought that was inevitable.

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Q That was understood at the outset?
A Or very quickly thereafter.
Q Was there an understanding at the outset about whether the Secretary of Treasury would get the actual interviews or deposition transcripts?
A I don't recall. No, I don't recall that issue coming up.
Q Certainly before this point, July 13?
A That is correct.
Q Now, in terms of the handling of the actual transcripts as they were being generated, was there a set of each transcript for the Treasury IG and a set of each transcript for the RTC IG, or were they kept with the Treasury personnel -- were the Treasury personnel interviews kelp at Treasury and RTC transcripts kept at RTC?
A Treasury contracted for the transcripts to be produced, and the transcripts were delivered to Treasury. There was one copy that was marked original, which was held, and probably continues to be held, by the Department of Treasury IG. A copy, a duplicate in essence, duplicate of the original, of

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the transcript for each witness was given by Treasury to the RTC IG.
Q So they had a complete set?
A The RTC office of inspector general.
Q Treasury IG had a complete set of all the transcripts?
A Yes.
Q Do you know whether Jane Ley or anyone from OGE had discussed with Treasury their providing transcripts on a rolling basis to OGE?
A I don't know of a certainty, but I believe that they must have because the arrangement ended up being that the RTC IG would copy RTC interviewees -- RTC personnel and Treasury, I believe, copied and provided the others to OGE. I believe that was the arrangement.
Q What do you recall about the portion of the conversation in which Ms. Ley indicated that Fiske looked shocked about the tight deadline?
A Just that, that she had talked with Fiske and told him of the time frame during which we were attempting to complete it, and he looked shocked.

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That was a direct quote.
Q Now, again let me keep your attention focused in the period after the meeting of the 5th, for the two weeks up until, say, the 20th of July. Did you come to learn that Francine Kerner was in regular contact with Jane Sherburne?
A Yes, I knew that. She was scheduling the White House witnesses.
Q Now, and did she make that -- I mean, how did you and she divide up the responsibility for the scheduling on the White House witnesses?
A Well, there was no division. She did it all. She had been in contact with Sherburne at the outset. Quite frankly, I had a great deal of difficulty getting my phone calls returned, a great deal of difficulty. She seemed to have a good bit more success, and that was fine with me.
Q Let me now show you what's been marked as Bates 006264, which is an E-mail to you from Steven Switzer, dated Friday, July 15, 1994, which refers in part to the July 14 meeting about which you've testified earlier, which also refers to some other

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things I would like to ask you about. If you wouldn't mind looking at that, take a minute.
A If I might correct, I testified as to a July 11 meeting.
Q I'm sorry.
A I did not say the 14th.
Q You're correct. It refers to a July 14 meeting.
(Witness reviewed the document.)
A Yes.
Q All right. Let me direct your attention to the third paragraph. Does this relate to the issue of Ms. Kerner getting an opinion from the general counsel's office concerning these ethics issues that you testified about?
A Yes, yes.
Q In the next paragraph, what is the reference to "the certification we discussed"?
A We had discussed back in the June 5 meeting at 4:30, the 4:30 meeting, we had discussed the --
MR. GIBSON: Excuse me, you mean the July 5 meeting?

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THE WITNESS: What did I say?
MR. GIBSON: June.
THE WITNESS: I stand corrected. It was the July 5 meeting between Sherburne, Cheston, Kerner and myself. We had discussed, as I said, getting the White House documents and the conditions under which they would be delivered and where they would be delivered, which was to Francine. They had told us that those documents contained redactions.
I had said that might be a problem, how do we know what the redactions are. And there was discussion of we can tell you they have absolutely nothing to do with the investigation. These documents deal with ongoing business in the White House, many of them deal with more than one subject, you will get only that portion dealing with material relevant to your investigation and the remainder will be redacted.
I recall, in fact, now as I'm focusing on that aspect, the statement that some of these documents contained information concerning the President's ongoing contact with people back in

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Arkansas, "Arkansas stuff" was the term used, that was not relevant and that sort of stuff was taken out. That was an example.
And I said well, in order to have a complete investigation, ideally we would like to see the unredacted documents. If not that, maybe we can get some sort of certification as to their completeness. And I had called and left messages to that effect on voice mail before -- now, let me back up. I don't know that I called before I left for Indiana, which I did on the afternoon of Wednesday. It might have been that I called and left messages subsequent to this E-mail, either immediately before or immediately afterwards.
At least Switzer and I had discussed the problem of getting some sort of a certification that no relevant material had been redacted prior to that time. So that's what the certification referred to there is, and that's a certification from the White House counsel that --
BY MR. CHERTOFF:
Q Did you ever get that certification?

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A No, we did not.
Q How many times did you have to ask for it?
A I don't know how many times I asked for it. I had a hard time getting through to people, I did not get phone calls returned, I left messages. And I mean, part of that was that these people were very busy.
Q Did you ever ask Francine what her position was on the certification?
A I don't recall.
Q Did you ever get to look at the underlying documents to determine whether the redactions were in fact appropriate?
A No.
Q Do you recall a particular document that was a cover memo from Mr. Ickes to the First Lady with one paragraph left unredacted concerning the Rose Law Firm, and then approximately two dozen redacted blank pages thereafter?
A I do not. I have not gone back and looked at the underlying material in this investigation. I just don't recall.

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Q Let me move to the next paragraph, which begins "my last gripe of this E-mail." What is this paragraph related to?
A There was an interview which we conducted with Beth Nolan, a White House employee, and at that interview, we asked questions about what we referred to as second tier contacts.
Q And Beth Nolan told you that?
A Exactly. The initial contact tier was from Treasury to the White House, the second tier would have been within the White House. And our agent asked a question and was told that -- again, this is to the best of my recollection.
I believe the way this happened is our agent asked the question and was told that there had been an agreement reached between Treasury and Ms. Nolan's attorney not to ask those questions.
Q Between whom in Treasury and Ms. Nolan's attorney?
A I don't know that we were told at the interview but according to this E-mail, it was Mr. Cottos, who is assistant inspector general for

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investigation.
Q Did you ever raise the issue about why that agreement was entered into?
A I don't believe that I did. I was out of town during this period. Our investigator certainly did and so did AIGI.
Q You mean your assistant inspector general for investigations?
A And our deputy. It was raised.
Q What did you learn was the rationale for this agreement?
Let me put it this way, what did you learn about why the Treasury inspector general agreed to have this restriction?
A Our understanding was that they thought the scope of their investigation was strictly who Treasury told what to. Our understanding was more extensive than that. We thought the next tier at least was relevant, and in general, as an investigative agency, one asks as many questions as one can get answered that, not only are directly relevant, but can lead to relevant information.

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Q Is it fair to say one of the issues that was critical to your ultimate report was the state of mind of the people that were having the communications; correct?
A Yes.
Q Therefore, what the people did with the information --
A Reflects on the state of mind, yes.
Q So, for example, if someone received information concerning a referral and then called up Jim McDougal and said guess what, there's a referral against you, that would be second tier information but pivotal information in evaluating the state of mind of the communicating person?
A I would agree with that.
Q Have you ever discussed this issue with, or to your knowledge, did anybody on the RTC side discuss this issue with the people at Treasury?
A I know there was discussion on the part of our investigators that they thought it was relevant. I don't know how they phrased those discussions though.

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Q Was there anybody in particular --
A You just phrased it like a lawyer would, and I agree with it. Our investigators are not lawyers. I don't know how they phrased it.
Q Is there anybody in Treasury who seemed to be taking the position that this ought to be limited?
A Yes.
Q Who?
A Mr. Cottos certainly did. I don't know who else. Mr. Cottos was concerned also as to time. Throughout the investigation, there was concern about interviewing the people who were strictly relevant and we have a tight time frame to meet.
Q So then it's fair to say that the time frame actually dictated the limitation on the scope of the investigation?
A I don't know that I can say that. I know that was a concern.
Q But your understanding is --
A But his concern also was that, as expressed to us, was that there was a scope issue here.
Q Did you ever take this up with Mr. Adair?

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A This particular issue (indicating) arose while I was out of town, and I don't know whether it was taken up with Mr. Adair or not. As I indicated to you earlier, IGs can only get interviews voluntarily, we can't subpoena people. And the bottom line is that if a witness tells you that he or she does not wish to discuss something, there is not a thing you can do about it.
Q Except report that?
A Except report that.
Q Do you recall --
A But I believe that ultimately -- I did talk to our agents about the issue and their response is we're going to go ahead and ask, and they did in the next interview and subsequent interviews, and sometimes people would answer and sometimes they wouldn't.
Q Do you know whether in the final report there was any identification made about people who refused to answer the question about --
A The transcripts were attached. You could see exactly what happened. That was all on the

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record.
Q Last paragraph says "We're meeting next Wednesday at 2:00 with Fiske's people to discuss this mess." What does that refer to?
A "This mess" refers to the investigation as a whole, the mess that we're investigating. The meeting with Fiske's people I did attend. We were seeking any information which the Office of Independent Counsel felt that it could give us.
The Office of Independent Counsel, as you are aware, had done most of its investigating under the auspices of the Grand Jury. For that reason, there was precious little information that we ever got out of them, but they agreed to meet with us, and to the extent that they could give us information, do so and that that -- that was the meeting.
"This mess" does not refer back to the limitation on questions.
Q Excuse me just a moment. Let me direct your attention to the period again before July 20, between July 5 and July 20. Did you become aware at some point in that period that Ms. Sherburne was

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taking another stab at communicating with Ms. Kerner about getting the transcripts of the depositions?
A No.
Q I'm going to show you what has been produced to us and identified as Bates 365, an interoffice memorandum from Francine Kerner dated 18 July 1994, to James Cottos with copies to Raiza Cesario and Robert Cesca. Raiza Cesario was a Treasury employee?
A Deputy inspector general for investigations.
Q I'm going --
A She worked directly for Mr. Cottos.
Q I will read you the second paragraph and then show it to you because I have a question about it. The paragraph says "Also Jane Sherburne says she would like to see our transcripts to see whether there are inconsistencies with White House interviews. She would tell us where significant inconsistencies, if any, exist between our transcripts and their interviews. What do you think?"

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Have you ever seen this before?
A No.
Q Did anyone ever give you any information from the White House in which the White House identified inconsistencies between their interviews and the depositions taken by the inspectors general?
A No.
Q Is today the first time you've seen document 365?
A Yes.
MR. PORTNOY: I just want to see the date on it.
MR. CHERTOFF: It's July 18.
BY MR. CHERTOFF:
Q Now, did there come a point you learned that a draft report was supposed to go up to Secretary Bentsen?
A Yes.
Q When did you first learn about that?
A To the best of my recollection, it was on the 21st or 22nd.
Q How did you learn about it?

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A I can't recall if I learned directly from Treasury or if someone in my office indicated to me that that was the case. We were doing a draft report, we were working on that to go to OGE. The hearings at that point were about to start, and they started on the --
Q 29th, I think.
A 29th?
Q I was there.
A Is that Senate side or House?
Q Senate. I don't know when the House --
A House was earlier.
Q That's right. It was the earlier part of the week.
A I know, because I was watching them on the 26th, so yes, the hearings were about to start. The request from Secretary Bentsen had always been that he get a report prior to the outset of the hearings, if at all possible. At some point, it was communicated to me that the Treasury inspector general wanted to at least give the Secretary a draft when we had one, and we were aiming to get it to OGE

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by the end of that week.
So I became aware that they wanted to do that. At that -- the only discussion as to transcripts that I recall at that time, the only issue as to transcripts, I am certain that I heard absolutely nothing about provision of transcripts to the White House. I did not hear that there was a request, I heard nothing about that. I heard nothing about that until the 26th, but the question of do we append transcripts to the draft did arise. We concluded that we did not need to append them to the draft that was -- the copy of the draft that was going to OGE because we had been providing them as the investigation progressed to OGE.
We asked Treasury IG whether the transcripts would be appended to the Secretary's copy of the draft, and the answer that came back was no, the office of general counsel already has them.
Q Now, had it been your intent to redact the transcripts -- When I say "your," I mean RTC IG's -- intent to redact the transcripts before they were submitted up to the Secretary?

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A I don't know that we had focused on transmission to the Secretary at that point. The Secretary was also chairman of the Oversight Board of the Resolution Trust Corporation. As such in his capacity as chairman, he was one of our overseers, one of the heads of the agency to which we might report in this situation. I would have had lesser concerns, because he had an RTC function, about privileged information going to the Secretary.
Q How did you learn that the -- who told you that the transcripts had been provided to the office of general counsel?
A I don't recall. I may have heard -- I know -- I don't recall if I asked the question of Treasury IG or if another member of the RTC IG did, but the question was asked.
Q And you were told that they were provided to the Secretary -- had been provided to the Secretary or had been provided to the office of general counsel?
A Office of general counsel.
Q Did you make any further inquiry or did you

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learn anything further concerning the circumstances under which that happened?
A No, I don't know how it happened.
Q Did you ask Francine Kerner?
A I believe at some point that I raised it because I recall that at some point I got -- and I don't know when -- I got a response that the Secretary has designated someone within the general counsel's office as his designee to receive this report, and that was the answer, that therefore that was the same as giving them to the Secretary.
Q Did you determine whether there was any restriction placed on the handling of the transcripts within the office of general counsel?
A I do not know whether there was or not.
Q And again, just to be clear that I have an answer to this, did you talk to Francine Kerner about this?
A About placing the restriction?
Q No, about the issue of the transcripts getting to the Treasury Secretary's designee on a rolling basis?

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A On a rolling basis?
Q Yes.
A I still don't know how they got them. I don't know if they got them on a rolling basis or if -- I do not how or when they got them.
Q But you do know or were told that they got them before the draft report?
A They had them by the 22nd, yes.
Q Did you ever discuss that fact with Francine Kerner?
A Beyond why did they get them, and I do have a recollection of saying why did you give these to the general counsel's office.
Q What did she say?
A They were the Secretary's designee, but I don't know when they got them, I don't know if they got them on a rolling basis.
Q Did you come to learn at any point that, during the same period of time, around the 21st or 22nd of July, that OGE had had a meeting at the White House concerning the matter of these contacts between the White House and Treasury personnel?

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A No.
Q When, in fact, was the draft report transmitted to the Secretary?
A I believe that was on the 22nd.
Q Now, I want to be quite clear on this. Was it your understanding that the transcripts which had preceded the draft report in going to the Secretary included RTC personnel interviews?
A That was my understanding at that time, the 21st or 22nd.
Q Is that something that you expected to be consulted upon?
A Yes.
Q Did anyone ever offer an explanation about why they didn't feel a need to consult with you about that?
A No.
Q Did you have any discussion with Mr. Adair about that fact?
A I believe that Mr. Adair was out of the office at this time. I don't think he was there on the 22nd. I believe he -- my recollection is he was

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out on the 22nd and the following Monday and back on the 26th, so I had talked to him, talked to him certainly afterwards.
Q What was that conversation?
A Well, that conversation was subsumed in what we found out on the 26th, which was that they had gone to the White House.
Q Before we get to that, what was your understanding of the purpose for which the draft report was going to the Secretary?
A To my understanding -- my understanding was to fulfill the Secretary's need to have a report prior to the outset of the hearings.
Q And you got this understanding from whom?
A I can't -- I don't know.
Q You were agreeable, however, to providing that draft report to the Secretary for purposes of informing him?
A We didn't understand why he needed it. We did not understand why a draft report should go to the Secretary, quite frankly, but the Treasury IG was adamant that that was necessary.

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Q That's Mr. Cesca?
A Yes. And that is the way it was angled.
Q Was it your understanding that the Secretary or any designee of the Secretary was to have a role in reviewing the draft and editing it before it was submitted to OGE?
A No.
Q Did you ever come to learn that happened?
A I learned that they reviewed it, but I didn't learn that until after the fact, when we were preparing the final report.
Q How did you learn that? I'm skipping ahead.
A When Francine Kerner handed over a copy of comments that she described as office of general counsel comments.
Q When was this?
A I believe that was at the meeting on the 26th, I believe.
Q And I think maybe what we will do is we'll move --
A It could be the 28th, but I think it was

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the 26th.
Q We'll get to that in a second. Let's move to the 26th. Did you have a meeting on July 26?
A Yes.
Q Where was it?
A At the RTC IG's offices; we have a large conference room that we use.
Q What was the purpose of the meeting?
A The purpose of that meeting was to start revising the draft. We were getting OGE comments by then, to start the process of finalizing our report to determine whether there was anything further that needed to be done, further questions that had to be asked, any additional interviews.
Q So in other words, as of the 26th, the process of determining if there needed to be further interviewing was not completed?
A No, it was not.
Q Who attended the meeting?
A At that meeting, from RTC it was myself, Clark Blight and Jack Adair. Our agents, Dwyer and Herlihy, were in intermittently during the course of

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that meeting.
From the Treasury IG, Ms. Kerner, Mr. Cottos, Mr. Cesca, and my recollection is that their Special Agent O'Rourke was in and out of the meeting, along with our special agents.
Q Going into the meeting, then, your understanding of what was going to happen was that comments from OGE were going to be reviewed, a determination was going to be made as to what further investigation would be done and then you were to plan out how to produce a final report?
A Yes, and we had our own comments as well.
Q Who actually did the writing of the report, the drafting, initial drafting?
A That was done -- as I said, it was done as a chronological, essentially as a chron of contacts. And it was done at various points by various people. The agents were having some input to that as they went along.
Q Who was actually writing, or who was putting pen to paper, someone in Treasury IG or RTC IG or both?

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A Both, as of the earlier time that I mentioned, as agents would go along, they would have some input. As to the draft itself, that was done -- the people with physical custody of the disk were the Treasury people.
Q Treasury IG?
A Yes.
Q Tell us what occurred on the July -- at the July --
A And they were inputting changes to it.
Q Tell us what occurred at the July 26 meeting.
A The first thing -- well, we were set up in this conference room. Over at one end of the conference room, we had a television which was tuned into the House hearings, which was how I knew they started on the 26th.
Mr. Cutler was testifying. Our meeting started prior to his testimony, at about 9:30, and Mr. Cesca started talking about where they were, what had been happening. And at one point during his statement, remarks, he said "and I got a call over

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the weekend saying that the Secretary wanted to release the transcripts to the White House and I said that was okay." And he continued talking.

I was seated across the table from both IGs, who were seated side by side, and I looked up at our IG, Mr. Adair, in shock. And his jaw literally dropped. You have heard that expression. He literally had that reaction. The RTC people were uniformly taken aback, with the exception, I believe, of Mr. Blight, who had had the experience of being taken aback about a half hour before the meeting when he learned of it and he had not had time to relate it to us, so we did not know, the rest of us did not know.

After a couple of more statements, I interrupted Mr. Cesca and said excuse me, did you just say that the White House has the transcripts? And he said, "yes." And then he related how that came about.

Q Did he indicate he had consulted with anybody before he gave the okay?

A What he indicated was that it happened late

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on Saturday night, Saturday I believe was the 23rd. He said he had been out to dinner and he came home to find a series of messages that, I believe Ed Knight had been trying to contact him. He may have also said he had a message from Francine Kerner.

He contacted, again I believe it was Mr. Knight and the request was relayed to him that they wanted to give the transcripts to the White House. He said he contacted Ms. Kerner, they talked about it and they decided to give their consent.

Q Did he indicate why he hadn't previously contacted Mr. Adair or you to get your consent?

A I think -- well, at that point it was obvious that we were having a very surprised and negative reaction to this statement. Mr. Adair may have even said, why didn't you call us. He apologized for not calling us, said in retrospect perhaps he should have done so.

Q What else was said about this?

A I think I said something to the effect of you shouldn't have done that. I know I talked to Ms. Kerner later, told her I thought it was a serious

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mistake and that I thought she was going to ultimately be called upon to defend that action, that I would not do so. And her response was "I'll have no problem defending this. I think it was appropriate."

Q When did you have this conversation with Ms. Kerner?

A In the hallway during one of the breaks in the meeting.

Q Did you, in the course of this conversation, say to her in substance that she had gone behind your back to do this?

A I did not use those words. I believe I told her I found it incredible that they did not even consult with us.

Q What did she say?

A She didn't really have much of a response, except to say that she thought it was appropriate to have released the transcripts. And I said we opposed this all along, and we don't think it's appropriate, but it was done. At this stage it was done.

Q Did she offer any explanation about why she

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hadn't been able to contact you?

A No.

Q Are you reachable through some kind of central system at the RTC so if somebody needs you on a weekend, they can beep you, or is there a central facility that can get you?

A No. I was, however, home, as was Mr. Adair that day. There was no statement that -- there was no attempt made to reach us.

Q She didn't suggest she attempted to reach you?

A No.

Q During the course of this meeting, did anybody indicate when the transcripts had been transmitted?

A As I said, Mr. Cesca said he got the phone call about 10:30 at night. That's the only reference to -- on Saturday. That's the only reference to time, and that's all I know about the timing.

Q Did you learn at that meeting, or at any other meeting, physically how it is those transcripts got over to the White House?

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A No. I saw a copy of a transmittal memo that was signed by Stephen McHale, and that's all I know about it.
Q I'm going to show you what's been marked as 6877 for identification. Is this a letter that you've seen, that you have just referred to?
A Yes.
Q When did you first see it?
A I don't know exactly. Sometime after the meeting on the 26th or perhaps at the meeting of the 26th, we learned that there was a transmittal and we requested a copy of it. We have produced to the committee our copy of this. It is notable because it was a very poor fax and there's a couple of lines that are hard to read but they are readable. That may show when it was faxed to us. I don't remember which day it was.
Q You heard from Mr. Cesca that he was called after 10:30 at night on Saturday, July 23?
A He was called before then but he said he got home at about 10:30. He had been out to dinner and he had no beeper with him so they were not able

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to reach him before then.
Q And that's July 23?
A Yes, sir.
Q Did you ever come to learn that in fact -- let me withdraw the question.
Who is Stephen McHale?
A He is an attorney within the office of general counsel; according to the title on this, he's a deputy assistant general counsel.
Q Was he involved at all as counsel to the inspector general?
A No.
Q Was he involved at all in your investigation?
A No.
Q Did you have any knowledge, until you saw this letter, that he was involved in handling the transcripts?
A No.
Q Do you know if he was in fact the Secretary's designee?
A I do not know.

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Q Do you know whether this letter of July 23, 1994 was actually sent -- and the accompanying documents were actually sent even before Mr. Cesca was consulted?
A I have no knowledge as to when it was sent.
Q Would you agree with me that, for it to have been sent after Mr. Cesca was consulted, it would have to have been sent around 11:00 at night on July 23?
A If Mr. Cesca's statement to us was correct, after 10:30 anyway.
Q Did Mr. Cesca indicate to you that he had -- after he had gotten in touch with Mr. Knight, he called Ms. Kerner?
A That is my understanding.
Q And then after that, he had to get back in touch with Mr. Knight?
A That is my understanding.
Q What else was said in the meeting on the 26th?
A Well, we started working on the report. We had changes that we wanted made. We also discussed

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who else would be interviewed. We wanted to interview Ken Ludwig because of a report that had appeared, I believe over the weekend, in the papers that there had been a contact at the so-called Renaissance Weekend meeting that we had not heard of before, so we thought we had to interview him.

OGE had a lot of suggested changes, questions. We concluded that we had to pose some additional questions, I believe to RTC, to some of the RTC personnel, those sorts of things. It was a long meeting. We went through a lot of detail on the next -- what the next draft of our report would look like.

OGE's comments were going -- they were viewing our report as that which was necessary to render their opinion, therefore there were things that were in the transcripts that were not focused -- that were not in our report that they wanted in there. They had several pages of comments.

Q When did you learn during the course of the meeting on the 26th that the office of general counsel was weighing in as editors of the report?

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A I can't recall exactly when.
Q How did it come up?
A Francine Kerner had a document that I believe we got on the 26th that she described and that may have been entitled "comments" -- "office of general counsel comments," or had an attorney's name on it. She certainly identified them as office of general counsel comments.
Q Was that the first time you learned that the general counsel was going to have input into this?
A Yes.
Q What was your reaction?
A Having been surprised by finding out that the White House had the transcripts, the surprise was of a lesser degree, I suppose, but I recall someone saying "why is your general counsel commenting on our report?" I said -- and I think the answer back was that was the Secretary's designee. Our reaction to that is why are they commenting on your report. But the comments were there and we looked at them.
Q As of this point in time, were you aware

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that, in the course of the investigation, there was evidence that the Secretary himself had conversations with Mr. Altman and Ms. Hanson, conversations in which Mr. Altman and Ms. Hanson themselves were in sharp dispute so that he was in fact a fact witness in the matter?
A We interviewed the Secretary, we considered him a fact witness.
Q Did you participate in the interview?
A Oh, no. Personally? No.
Q But you knew he was a fact witness?
A Yes. The RTC IG was fairly insistent that he be interviewed.
Q And he knew that one of the issues was the content of the meeting, what had been said in the meeting in which Ms. Hanson had a version, Mr. Altman had a version?
A I would have -- I'm aware that that became an issue. I would have to go back and look at his interview to recall what I knew then, and I have not gone back and looked at the substance of this report.
Q You knew that Mr. Steiner, the Secretary's

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chief of staff, was a subject of this investigation?
A Yes.
Q Would you agree with me that whatever -- putting aside whether it would ever be appropriate for the Secretary or his designee to be editing an IG report that was going to OGE, in this case the Secretary's office itself was in fact involved in the very underlying subject matter of the investigation.
MR. PORTNOY: I would just like the record to be clear, you're asking whether it's ever appropriate, and I would just like the record to clarify whether you're asking her in her personal opinion or in some professional --
MR. CHERTOFF: In her opinion based on her experience.
BY MR. CHERTOFF:
Q You would agree with me it was especially inappropriate where the Secretary's office itself was in fact part of the transactions that were being looked at?
A That would cause me concern, and did.
Q Did you have any discussion afterwards

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concerning your reaction to the edits being suggested by the office of general counsel?
A Well, we looked at what they suggested, most of which was rejected. But quite honestly, there were instances in which they -- a couple of occasions they wanted -- they suggested changes in phraseology that were, in fact, not ultimately accepted but pointed out to us that we may have phrased things incompletely or without the greatest of accuracy. And we resolved that by pulling quotations from the transcripts.
Q Did you ever come to learn that there was actually a review team that was looking over this --
A I don't know how the comments were prepared.
Q Did you have any idea who participated in preparing the comments?
A I do not.
Q Is there anything --
A Wait a minute. I may have heard the name Schmalzbach in connection with that.
Q You knew Mr. Schmalzbach to be a member of

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the general counsel's office?
A Yes, but that's a fairly vague recollection.
Q Is there anything else about the meeting on the 26th that you haven't told us about that you recall?
A Well, as I said, we had the television on for the hearings and we had very bluntly indicated to the Treasury people that we thought that the decision to issue -- to release those transcripts would be problematical to us and to them in the future. And within moments of our indicating that, Mr. Cutler was testifying and saying that he had seen Ellen Kulka's transcript, I believe, at which point -- well, it was obviously at that point public knowledge almost immediately after we had learned of it. I have a rather good recollection of that as well.
MR. PORTNOY: I gather you will go a fair bit longer today?
MR. CHERTOFF: I won't be terribly longer for me. I can see finishing in about 40 minutes.
MR. PORTNOY: Completely?

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MR. CHERTOFF: My stuff, yes.
MR. GIBSON: I think we've been going off the record.
MR. CHERTOFF: Sure.
(Discussion off the record.)
(Whereupon, at 12:50 p.m., the deposition was recessed, to be reconvened at 1:30 p.m. this same day.)

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AFTERNOON SESSION (1:34 p.m.)

Whereupon,

PATRICIA M. BLACK

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

EXAMINATION (Continued)

BY MR. CHERTOFF:

Q Now, after this meeting on the 26th, did you have any discussion concerning the public reaction that there might be to the disclosure of the transcripts and the way in which the RTC would handle -- the RTC IG would handle any public inquiry or press inquiry concerning the transcripts?

A Well, we certainly had, amongst the RTC IG personnel, discussions about the transcripts, and at one point, I believe on the 26th, we got an E-mail from our press officer, Jack Adair got the E-mail from our press officer, Steve Katsanos, basically saying I thought you guys didn't release parts of investigative materials as you're going on with your investigation.

And when Jack got that message, he came

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into my office and said, I want you to look at something on my computer screen. And I saw that, and we talked about how to respond to it because Katsanos considered it possible that he was going to get press inquiries on it. And we responded by simply saying that we released transcripts of interviews only to the interviewee, and it was the Treasury IG's decision to release the transcripts to the White House, we did not know about it until that morning.

Q Now, I want to show you what's been marked as Exhibit 6054 for identification and ask you whether you have ever seen that.

A Yes, I have.

Q A couple of references I want to ask you about. One is a reference obviously to the discussion on the 26th of July concerning the draft where it says in an E-mail "I suppose in their wisdom and haste, Treasury folks decided not to even mention the Ludwig contact."

What do you remember from the 26th of July as being the conversation relative to the Ludwig contact?

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A There was only disagreement as to whether or not we needed to interview Mr. Ludwig concerning the contact that I referred to earlier that had been reported in the press, I believe over that weekend. In general, the RTC personnel, without exception, the RTC personnel wanted to interview Mr. Ludwig. The Treasury people, by and large, did not think it was necessary. I don't know if that was uniform on their part, though.

Mr. Switzer was out of the office during this period of time, and he was communicating by computer also. I believe the decision was made at the meeting on the 26th to, in fact, interview Ludwig. So Steve was commenting on the earlier draft, which when he left town he had taken with him, and it did not reference the Ludwig contact. I don't know that we knew about it at that point. Maybe we did ahead of time. I can't remember when we found out about it exactly, but it certainly was an issue by the 26th.

And I think we had decided by then -- we had gotten them to agree, and OGE weighed in also in

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saying that you should interview him. Steve was not aware of that at that point.

Q What was the reasoning behind the two positions about whether Mr. Ludwig ought to be interviewed?

A Well, our reasoning was it's another contact you have to deal with.

Q What was the argument against it?

A They did not think it was relevant but I cannot recall why. And there was a time factor. They wanted to get finished.

Q So again the time issue weighed into the decision?

A Yes. Well, not into the decision because we did the interview.

Q It weighed into their position?

A Yes.

Q Now, there's also a reference to "Pat and Jack have shared their E-mail traffic with me about Treasury OGE sharing copies of transcripts with the White House. Does that action possibly violate the brand-new White House rules about what they will and

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will not do in connection with investigations by regulatory or law enforcement agencies?"

What rules were those?

A First of all, the first sentence about sharing E-mail traffic referenced the Katsanos E-mail series that I had mentioned a moment ago, and the phrase "does that action" does not refer back to the E-mail traffic but rather to the sharing of transcripts.

Q The sharing, I understand that.

A Mr. Cutler announced that the White House had in place new regulations concerning disclosure of information in the situations referenced by Steve here; that is to say, with regard to investigation by regulatory and law enforcement agencies. I believe that was announced in his testimony on the 26th. It's possible that it was announced prior to that time. And Steve's question was, does the sharing of the transcripts run afoul of the new procedures.

Q Did anybody ever pursue that question?

A I don't believe so. You need to realize that very shortly after this disclosure, the

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independent counsel indicated that he was going to look into it.

Q What was your understanding -- withdraw the question.

Were you ever consulted or was there any discussion with you concerning the request that the Senate Banking Committee had made to see the transcripts and the report?

A Yes.

Q Tell us about those conversations.

A It jumps ahead a little bit. On the 28th there was a marathon meeting, also held at the RTC IG's office in our conference room, where the report was being finalized. At least at that point, and perhaps even before that, Francine had indicated to me that she was in contact with Congress which wanted copies of our report. The report was, in fact, physically reproduced at Treasury, Treasury binding and printing it up. And Francine indicated to me that she would take care of dealing with Congress, and I, in fact, to that point, had not had any contact with anyone in Congress on this issue.

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After the report had been issued, I believe by letter dated the 31st of July from Senator Riegel and by letter dated August 1, I believe, from Congressman Gonzalez, there were requests made to the IGs -- I can't remember if they were directed to Treasury or jointly, or if in fact one of them did it one way and the other another -- for copies of the unredacted transcripts. I saw those letters, I believe on August 1. The 31st was a Sunday, so I believe I saw them on August 1.

I contacted Ellen Kulka and told her that I had gotten that request, that we had gotten those requests and how did RTC feel about that, the privileges asserted in the redacting process were those of the RTC. And there was some indication at first that RTC wanted an actual subpoena from the committee before they would turn over that material or before they wanted us to turn it over. And I believe there's an E-mail that I have produced to you that indicates that we were hesitant to require a subpoena from Congress because of the IG's obligation under the IG Act to turn information over to

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Congress, and would it not be sufficient to require something less than that from the committee.

I then had a conversation with Andy Tomback who was a deputy general counsel and somebody else I can't remember -- there was another person on the line with Andy -- where they said we don't really think that a subpoena is required. You can just say that you're acting as though you were under subpoena. The committee has the authority to issue one.

And those conversations and E-mails occurred on August 1st and 2nd. Also on August 1st and 2nd, I was talking to committee staff, there was a woman lawyer from Senate Banking, Maloney or --

Q Beth Maloney?

A Yes. I got her once. And the Senate, of course, was in the midst of hearings and things were fairly chaotic, but I did get her once after I had talked to Kulka, but before I had talked to Tomback, and I had expressed concerns to her. I had pointed out that the Senate had -- both sides of the aisle had backed off on questioning concerning the

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underlying investigation and were very careful, in fact, to avoid that. That's exactly what the redactions were, and she said yeah, I can tell that by the context, and I have drawn my own conclusions as to what it must have said.

I expressed reluctance to physically send those documents up. We left it, well, maybe we'll work something else out or maybe the Senator will insist on physical copies. My reaction is if he insists, he will get them; if the committee insists, the committee will get them.

I had a similar conversation with the House side but on the House side, reached a resolution with the staff, not with Chairman Gonzalez himself but with his staff, that they thought it would be adequate if we made the unredacted transcripts available to them, and they would come and look at them if they felt they needed to. By then they had also pretty well figured out what the content was.

So on August 3rd -- I tried, subsequent to my conversation with Tomback where I relayed what the House was willing to accept, I said I don't know if

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the Senate will accept it or not, and for that matter, I don't know that the chairman will accept it. That's what his staff said they thought he would accept, but that's tentatively where we're going, that we will make it available to the committee and its staff in our offices. And he said that would be great and I said but if they push, we're intending to produce it. And he said well, if you have to, you have to, RTC understood that, as long as we asserted all the privileges and ask that it be kept extremely confidential.

So in a letter back that I drafted to both committee chairmen, that was exactly what we offered and said if this is not acceptable to you, let us know, and that went out August 3. We never heard anything back from anyone -- with the exception of some months later, a member of the minority staff on the Senate side asked to come and review the transcripts, and we did make those available after confirming that he was on committee business.

Q I would like to direct your attention now to July 28, what you have described as the marathon

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meeting. Where did that take place?
A That took place in Rosslyn in our conference room at the IG's office.
Q Who was present?
A Present in that one were for the RTC, myself, Clark Blight, Jack Adair, Joan Dwyer, Sarah Herlihy and part of the time Phyllis Reed, who is a secretary. Her role was inputting data, changes on the report.
On the Treasury side, Kerner, Cottos and Cesca.
Q What was the purpose of the meeting?
A Okay, but --
Q I'm sorry, I didn't mean to cut you off.
A Also at one point Ellen Kulka, general counsel, came over and spoke to a group consisting of Adair, myself, Kerner and Cesca; and I believe she had -- well, she did have RTC legal personnel with her, and I think they were attorneys by the name of Orr, Binkley and Carter.
MR. PORTNOY: Could you spell that second name, please.

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THE WITNESS: B-i-n-k-l-e-y.
BY MR. CHERTOFF:
Q What was the purpose of the meeting?
A The purpose of the meeting was to finalize the report.
Q And it was a long meeting.
A Very.
Q Let me ask you first what discussion there was, if any, concerning the issue of transcripts and transcripts having been furnished either to the Secretary or to the White House.
A I don't remember a lot of discussion about that at this point. I mean, that was over and done with, and there was not a thing to be done about it. There were people references again that we thought that was going to cause problems, as a separate topic.
There arose the issue -- to the best of my recollection, for the first time, it was either at that meeting or perhaps in some phone calls the day before, that Secretary Bentsen wanted to release the report and the transcripts publicly with the OGE

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opinion. At that point we knew we had to redact those transcripts, there was information that was not appropriate for public release at that point. So --

Q Let me stop you a second. Before that time you had never performed the function of redacting the transcripts?

A Oh, no.

Q And certainly you didn't redact the transcripts that were sent up to Secretary Bentsen?

A No.

Q And certainly you didn't redact the transcripts that went over to the White House?

A I did the redactions. They were not done until the 29th --

Q Back to the discussion of the redactions.

A -- the 28th. There had been discussions before, during the course of this investigation, about confidential material being referenced in those transcripts, and there had been discussions about the criminal referral itself and how we handled that document, which we had access to during the course of the investigation.

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And on that issue, I advised our agents not to release that document even to OGE, and I talked to OGE about that. I explained to them that obviously that was just critically sensitive to RTC. RTC did not want that document out of its custody. And I told OGE that I could not understand why they needed it, but that if ultimately they did, they could come to our offices and review it.

During the course of the discussion, OGE agreed that it did not need that document, and in fact, that it did not even need to review it. It focused on the content of the contacts instead and that what the underlying document said was not material to the issues before us.

So that had occurred a couple of weeks before that time, so we were certainly sensitized to the criminal investigative material being discussed.

In addition, Jane Ley had brought the issue of privileged information up early on in connection with the transcripts themselves, so when we became aware that there was now going to be this push to release the documents, we said they cannot be

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released unredacted.

I contacted, on the 27th or the 28th, Ellen Kulka, the general counsel of the RTC, and raised this issue with her, saying that I would be willing to do that redaction on RTC's behalf or she could do it, she and her attorneys could take a first cut at proposing redactions but the final cut would be with the IG, it being our document.

She objected to the release of the transcripts at all. I told her -- and this conversation of a certainty occurred on the 28th. I told her that I was certain that they were going to be released in some form. I told her they were certainly going to be appended to the report and there was a great deal of pressure to get a publicly released version of the entire report, including the exhibits.

She asked to come over and make her case to the IGs personally. I said I will call you back. I walked across the hall into the conference room, where the IGs were, and I told them that Ellen Kulka wanted to come over and talk to them, that she was

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very concerned about the transcripts being released at all and she wanted to make her pitch directly to the IGs personally. And they said of course.

She came over between 11:00 and 11:30 and spoke to them for about an hour.

Q In the course of either this conversation on the 28th or your earlier telephone calls, did you indicate to her that the transcripts had been sent to the White House?

A Oh, she knew that. Cutler had proceeded to talk about her very own transcript.

Q Did you have any conversation with her about that?

A Yes.

Q When was that?

A 27th -- maybe the 27th, certainly the 28th.

Q What did she say?

A She was livid, she was furious. And I said we are most displeased ourselves. It was done without our knowledge or acquiescence, and, in fact, over our expressed objections.

Q Did she indicate to you that, if she didn't

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get satisfaction on the issue of the handling of the transcripts, she was prepared to go to Congress and indicate that the IG's investigation was not being allowed to proceed independently?

A She indicated a willingness to go to Congress to protest. Whether it was that the IG's investigation was not being allowed to proceed independently or that that release had adverse potential consequences to RTC's investigation, I don't recall.

Q You relayed this conversation you had with Ms. Kulka about her willingness to go to Congress over the issue of the transcripts to the assembled group in the meeting on the 28th?

A Yes, I did --

Q What --

A -- as a part of she wants to come over and talk to you, and here's what she is going to have to say, among other things.

Q What was the reaction?

A As I said, the reaction is tell her to come over and talk to us.

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Q Did anybody say anything?

A I don't recall.

Q Did Ms. Kerner say anything?

A Not that I recall.

Q Did she do anything?

A Ms. Kerner frequently -- well, before Ms. Kulka -- let me back up.

Ms. Kerner frequently left meetings to make phone calls. That was a pattern. She had asked me before this meeting if there were phones that she could use, and I indicated a temporarily vacant secretarial station that was available. And I believe I told her that if she needed to, she could use my phone, which was nearby the conference room as well.

She was in and out of those meetings a lot. That's the extent of my recollection. I cannot tell you at what time she left a meeting.

Q Did you ever learn who she was calling?

A Not of a certainty, no.

Q Let me ask you this. Was there, in the context of the meeting on the 28th, a need to conduct

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ongoing negotiations with Treasury, either the Treasury Secretary or the office of general counsel at Treasury concerning the way the transcripts would be handled?

A Not in my view, no.

Q And who was supposed to be the point of contact when the inspectors general reached their decision concerning the transcripts? Who was supposed to be the point of contact to convey that to the Secretary of the Treasury?

A I don't know. That was strictly between them. We weren't conducting any such negotiations with our agency at all.

Q But your meeting was an internal meeting designed to formulate the inspectors general's position on how to handle the transcripts?

A That was one issue. We were drafting the final report. We were finalizing that report on the 28th.

Q Was there any reason that you needed -- that the group needed to be in contact with the White House during the course of this meeting?

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A Not that I can recall. However, I would have to look back and see the dates of any transmission of changes of interviews. When I say "changes," let me -- the witnesses were all reviewing their transcripts. If they had any changes to those transcripts, they were transmitting them to us. I do not -- the White House people were interviewed at the end of the process, and it is possible that there were transcripts outstanding from White House interviewees. That is also conceivable for Treasury and even RTC. I'd have to check those dates.

Q Who were they transmitting these changes to?

A Ms. Kerner, I believe.

Q Beg your pardon?

A I believe Ms. Kerner.

Q Were they transmitting it to her while she was in the meeting?

A I don't know that. I do not know whether they had all been transmitted at that point. I just don't know on the 28th.

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Q Do you remember incoming calls coming to her or messengers coming with --
A Yes.
Q -- okay. Let me break it out. Do you remember incoming calls coming to her?
A Yes.
Q Do you remember messengers coming to her?
A No. If you mean by messenger, someone bringing documents, not during that meeting. If you mean someone bringing a message as in a secretary taking a message, yes, that happened.
Q What did Ms. Kulka say at the meeting on the 28th to the assembly?
A Now, at that point there were only four of us there, and Ms. Kulka and whoever she brought. The four being the two IGs and their counsel. She was absolutely furious and that was directed at the Treasury people, in essence saying how dare you release RTC material and particularly how dare you do so without even consulting the RTC IG. She was livid. And there was a rather protracted argument between Ms. Kulka and Ms. Kerner defending her

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actions.
Q What did Ms. Kerner say in defending her actions?
A That the investigation was essentially complete at that time and that she thought the action was appropriate and reasonable.
Q In fact, the investigation was not completed as of that time; isn't that correct?
A That is correct, it was not.
Q Did she expand at all in terms of her reasons as to why she thought it was reasonable?
A They argued back and forth a long time, but that's essentially the argument.
Q Had you had occasion, between the time you learned about the transcripts going to the White House on the 26th and the 28th, to talk to OGE about the fact that the transcripts had been sent over?
A I probably did but I don't have a specific recollection.
Q Did you talk to Jane Ley?
A I probably did.
Q Do you have any recollection of her being

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angry about it?
A I don't have a specific recollection of a conversation that occurred right then. I know I've talked to her either then or subsequently and expressed my own dismay, anger.
Q What did she say?
A My recollection is she was not pleased either.
Q Did Ms. Kerner ever indicate to you that she was communicating about what was going on in the meeting on the 28th with Mr. Schmalzbach back at the Treasury Department in order to get lobbying done at the higher levels of the RTC?
A She never indicated that to me.
Q Did you eventually learn that from somebody?
A I learned that communications had been made for that purpose. I don't recall if I learned of a certainty that it was Francine doing the communications, but I saw an E-mail that referenced the communications.
Q Now, still focusing your attention on the

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28th, is there any more discussion concerning the transcripts that you remember from that day?
A Well, as I said, Ms. Kulka came over and made her case for nonrelease of the transcripts, and the IGs both agreed that the transcripts had to be a part of the report. The way it was written as a chronology reference back to the actual transcripts was important. We had written it with that expectation for some time now and we could not change at this late date.
They also said, pointed out that all of these materials were going to be FOIAble sooner or later so we may as well deal with it now.
She then took the position that well, if that's the way it is, I understand it. This document is yours and there's nothing I can do about that. I don't like it, but I hear what you're saying and we want to propose redactions then. At least two of these people, at least Binkley and Carter were there at that time, maybe, or joined them later that day, but we said well, we will put the transcripts in a room with you and give you highlighters and a bunch

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of yellow stickies and propose your redactions. And they did that. They started immediately.

And as I said, my recollection is that two of them were with her at that moment and that Mr. Orr joined them in progress later that day. They worked from approximately noon, 12:30 until 11:00 or so at night.

Q And did you ultimately then the next day review the redactions that they had provided?

A Yes. I was reviewing them as they were doing them also. We remained there the whole day, leaving about midnight.

Q And you made the final decisions about the redactions?

A Yes. At the time they were reviewing them, I would come in and talk with them about how they were going. If they had a question, they would come and get me, and we talked about what they were proposing. And then ultimately the next day I made the redactions.

Q What was the principle you used in deciding whether a redaction should be taken or not?

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A First of all, I was producing a publicly disclosable document under the rubric of FOIA. This is the document we would turn over if we had a FOIA request, so that was the general criteria you use.

The RTC's specific concerns were to redact all information that went to the specifics of the criminal referrals that had not been publicly disclosed by the RTC, the fact that it may have been referenced elsewhere either accurately or inaccurately was not relevant. The relevant issue was whether RTC had authorized that disclosure.

FOIA, of course, also has all sorts of fairly discretionary, in many instances, exemptions and they were not asserting those particularly heavily. There were privacy concerns where individuals' names were mentioned. The individuals who were being interviewed had, for the most part, at least for the purposes of this investigation, all had passed into the public figure type of status, so not their names, but names elsewhere in the reports, particularly names having to do with the criminal investigation those were the things that they were

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protecting. They were protecting the underlying criminal investigation.

Q And you approved those kinds of redactions?

A Yes.

Q And then you had the final decision on what was to be redacted?

A Yes.

Q Now, you knew at that point in time, though, that unredacted versions of the transcripts were in the possession of the White House?

A That's correct.

Q During the meeting on the 28th, what discussion, if any, was there concerning further editing suggestions from the Treasury general counsel's office or the Secretary of the Treasury?

A Those came up again. We had not -- I said, we had not made some of the ones before, is my recollection. Anyway, they certainly came up, and we accepted ones that we thought were well-grounded in fact.

As I said before, generally by expanding a reference to include a specific quote rather than a

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paraphrasing of it, but those did come up, along with OGE's. OGE had further comments.

Q Did anybody in this process raise any objection to the Treasury Secretary or his designees actually having input into the final version of the report?

A As I said, that had been referenced earlier. At that point we were simply taking the comments on their own merits. And if we thought they had merit, we dealt with them; and if they did not, we did not.

Q Am I correct in my understanding that, as between the two IG offices that were pursuing this, Treasury really had more control over the final product?

A Control over the final product?

Q Yes. If there was a disagreement about whether something should be put in or not, that it was not reconciled, that Treasury would ultimately make the decision?

A That was certainly true as to earlier drafts when they had custody of the disk. This one

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was being done in the room with us and we had the disk. A number of our changes that had been suggested before had not made it into that next draft. One of the reasons that that was being done, in the room with us at the time was -- that was one of those reasons.

I don't recall any instance that day on the 28th on which we reached an irreconcilable difference.

Q Do you remember an occasion on another day when you reached an irreconcilable difference?

A Well, as I said, we suggested changes and they didn't show up in the report.

Q Did they make it in the final?

A Yes.

Q Because you reinsisted on it?

A Yes. We physically input them.

Q When was the final report submitted?

A The 29th.

Q And when is the last time you worked on it?

A The 29th.

Q That was in reviewing the redactions?

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A That's when doing the redactions.

THE WITNESS: Off the record?

MR. CHERTOFF: Sure.

(Discussion off the record.)

BY MR. CHERTOFF:

Q Back on the record.

A I recall an instance on the 29th or the 30th which I had gone home, Jack Adair called me with a question on something that related to that report. I can't remember what the question was but I gave him advice on it. That could have been -- I mean, if it was on the report itself, it had to have been on the 29th because that was when it was finalized.

Q Now, after the report was completed on the 29th, did there come a time that you learned that there was controversy over the manner in which the transcripts had been transmitted to the White House, and that the White House was going to prepare a letter setting forth its version of what had happened?

A Yes.

Q During the next few days?

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A Yes.
Q How did you learn about that?
A I believe I got a phone call from Francine Kerner.
Q What did she tell you?
A She told me that Mr. Cutler was issuing a letter addressing those points.
Q Why did she call you about that? What did she say to you about why she was calling you about that?
A She had gotten a call -- I believe she had gotten a call from the White House or perhaps she had -- from White House counsel's office or perhaps she had initiated one, I don't know who initiated it, where she had learned of this, and had some concerns, I believe, about the accuracy of the letter.
Q What did she say to you?
A She at first said that the letter was going to state something to the effect that they had made -- the White House counsel's office had made people available and had gotten the transcripts. And I said that's not true, or at best, it's very

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misleading if it links those two things because I had said at the outset no, that is not going to be quid pro quo and we're not going to make the transcripts available to you. If that letter links those two events, it's just dead wrong.
Q What did Ms. Kerner say in response?
A She indicated that my recollection was completely correct, that I had said no, and that it was her understanding that the two were not -- the two events were not so linked.
Q So what happened next?
A I made a call to Ms. Sherburne immediately. I might have gone in and talked to Jack Adair and then made the phone call, where I stated in very strong terms that I objected to any such linkage, that I thought it was misleading, and I certainly hoped the letter didn't say that.
Q What did she say?
A I didn't get her. I left that as a voice mail message. And I got a return call fairly quickly.
Q And?

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A She said that the two were not linked. I told her I wanted to see the letter before it went out. She said that it had already gone out, she thought. And I said well, I've expressed my concerns. I certainly hope the letter is not misleading and she said she hoped it was not also. It was not their intent to mislead.

Q What was her demeanor in the telephone call with you? Did she seem apologetic?

A She seemed concerned that I was concerned. Not hostile or anything.

Q Let me show you what's been marked as Exhibit -- I'm sorry, go ahead.

A I was going to say, shortly after that, I received a call from Francine who had been called by Sherburne and we learned that the letter had not gone out and would be transmitted to us before it went out.

Q Before we get to that, let me just show you what's been marked as Exhibit 368 for identification, which is a copy of an E-mail under your name. I would ask you to take a look at it and read it

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because I have a couple of questions I want to ask you.

While we're at it, let me give you Exhibit 6289 for identification which is the follow-up E-mail.

(Witness reviewed the document.)

BY MR. CHERTOFF:

Q Is this E-mail an accurate rendition of what occurred on or about August 3, 1994?

A Yes, and it was typed within minutes of the phone calls referenced.

Q There's a reference here to your conversation with Ms. Sherburne where she called back, in the middle paragraph.

A Uh-huh.

Q Where she indicated -- it indicates "she said that she had not remembered a definitive refusal." I want to make sure we're very clear on this. When you had your meeting on July 5 with Ms. Sherburne and Ms. Cheston and Ms. Kerner, was your refusal about turning over the transcripts unequivocal and definitive?

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A Absolutely.
Q Let me show you what has been marked as Exhibit 6274 through 6276 for identification and I'll ask you if you recognize this.
A Yes.
Q Is this a fax that you sent to Ms. Sherburne making suggested changes in her letter to conform with your belief of what the accurate state of affairs was?
A Yes, it is. Your copy has the edges of the words on the fax sheet itself cut off, but that's it, yes.
Q The cover sheet -- actually let me switch copies with you. I have a cover sheet which I think has the full words on it.
A Yes, it does.
Q The comments that are typed on the cover sheet are your comments?
A That is correct.
Q And would you explain what was in the letter that troubled you, specifically in terms of being misleading?

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A The last paragraph in the letter, what was page 1 of the letter, appeared to me to be misleading. It states -- one sentence in it especially -- "we permitted the inspectors general jointly to take sworn deposition of all the White House officials they wanted and we requested copies of all deposition transcripts."

Both halves of those statements are true but when linked are misleading in that, yes, they provided everyone that we wanted; yes, they did permit the depositions to be sworn; and yes, they did ask for copies of the transcripts, but they were refused at the time that that happened. And I thought to make it -- this appears to indicate that there was not a refusal, and I believed that the two had to be completely unlinked in order to be accurate. The time between the agreement to make all the witnesses available and the time at which they got the transcripts, never with the RTC IG's permission but with the Treasury IG's permission, was a period divided by several days, about three weeks.
Q It's also correct that the original letter

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as presented here suggests that both inspectors general received the request to furnish the depositions?

A Yes.

Q Whereas, in fact, the ultimate request which led to the depositions being turned over was not transmitted to the RTC?

A That's correct. We both did receive a request but one of us refused it.

Q Now, let me show you what's been marked as Exhibits 6268 and 69 for identification, which is a signed letter by Mr. Cutler. And let me direct your attention to the last two paragraphs on page 1, which is 6268, and ask you whether that, in fact, embodies the correction that you wanted.

A Not precisely, in that I had suggested on my letter that the division -- that that sentence stop with all the White House officials they wanted, period, and a new paragraph start, and that was done.

My suggested wording, which was true -- which reflected my knowledge as of the time I wrote

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that, and until just a few minutes ago, was a statement that on July 23, we requested copies of all the depositions, I believed that to be true until a couple of hours ago when you showed me an E-mail that indicated to the contrary. And I had also linked that to that they had gotten -- to the fact that they got the transcripts from the office of the Secretary. And what they -- so they divided it somewhat differently, saying we requested copies of all deposition transcripts from the office of the Secretary. On July 23 Treasury provided.

Q Did you see this version of the letter before it was sent out?

A No, I did not. I should elaborate on that last statement. I did not see that but I think they -- fairly speaking, that did address my concerns.

Q Did you ever hear any information concerning the investigative files of the inspectors general's investigation being released outside of the custody of the inspectors general, putting aside the transcripts of depositions?

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A No. Again, also you have to put aside OGE.
Q That's right, other than to OGE or within the two inspectors general offices. Have you ever heard of a release of the investigative file, apart from what we have discussed in terms of the depositions, to anybody outside of the two inspectors general offices and the OGE?
A Eventually; we got a request this summer from the House Banking Committee, and then, of course, very recently from you and we provided copies of those materials.
Q Other than that?
A The independent --
Q And the independent counsel --
A The independent counsel. We provided material to them.
Q Apart from what you've told us, are you aware of other communications between Ms. Kerner and people in the office of the general counsels -- office of the general counsel of Treasury during the period of June 30 to August 5, 1994?
A During the course of speaking with the

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Office of Independent Counsel, I became aware of communications such as that.
Q What?
A I was --
MR. PORTNOY: Are we going to avoid inquiry into the substance of discussions with --
BY MR. CHERTOFF:
Q I don't want to know the substance of discussions. I just want to know what you now are aware of.
A I'm going to at least have to discuss a document I saw.
Q Tell us about the document.
A I was shown a copy of a document that was an E-mail from Mr. Schmalzbach to Mr. Knight. It was dated the 28th. The time was, as best I recall, 10:43 in the morning. And that E-mail relayed the substance of what was going on in the meeting that we were having with the Treasury IG people at that time, contemporaneous with the message.
Q Other than that, are you aware of any other contacts that you've not told us about?

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A As a result of that E-mail, of my having seen that E-mail, I went to our AIGI, Mr. Blight, and we ordered the logs of telephone calls made from our offices during the month of July, and there were other phone calls placed from our offices from the secretarial bays that were vacant during meetings that were on the 26th and the 28th. I do not know of a certainty who made those phone calls.

Q I'm going to show you what's been marked as Exhibits 025246 through 025251 and ask you if you recognize this document to be the document you had generated.

A Yes.

Q Just if you can interpret, if you can interpret, if one goes left to right, what does it tell us about?

A The end of the column named "station," that is the telephone extension from which the phone calls were made. The next column is the date. The third column is time, that is the time the phone call began. The next column is number dialed, it's just that. And the last column was duration, which tells

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the length of the phone call.

Q Is there only one telephone call associated with a station that has a number there, only one telephone, physical telephone device that's linked with this particular number for station?

A That is correct.

Q It's not that you can use any number of extensions and have it come back to this station?

A No. The way our telephone system works, if you pick up that physical telephone at any station, it will record a call being made, data from the call. It does not record the substance of the call itself, but records this data as being made from that particular extension.

Q Where was this particular phone located, 87804?

A That was a secretarial bay immediately to the right. The secretarial bay immediately to the right of the conference room as you emerge from the conference room.

Q Is that the secretarial bay to which you directed Ms. Kerner on the 28th of July, 1994 for

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purposes of her making telephone calls she needed to make?
A Yes.
Q I want to show you what's been marked as Bates 25320, which I believe are notes of yours. You can tell us if you recognize the handwriting.
A Yes, that is mine.
Q And they're dated 4/26/95?
A Yes.
Q What do these notes reflect?
A These notes reflect a series of telephone conversations between a reporter by the name of Kyle and myself.
Q And Mr. Kyle, is he an Associated Press reporter?
A Yes.
Q And would you just read the notes down for us?
A Yes. Starting at the top, the numbers 105-120, that tells the time and duration of the phone call between 1:05 and 1:20, on 4/26/95. The number immediately below that starting with 202 is

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the AP number. First line says "Kyle said that they have info that Cohen believed F provided Altman, Hanson or their attorneys the transcripts."
Next entry, "letter from Cutler to Bentsen citing F as repository of docs," which is documents.
Q And F refers to whom?
A Francine Kerner. The third entry, "allegation that F gave TR," which is transcript, "to WH," which is White House, "to allow prep," preparation, "of testimony." These were allegations.
Q That the reporter told you about?
A Yes.
Q As you continue on, what's the next entry?
A Next entry is "4/27/95. 11:15-12:28."
Q 11:28.
A I'm sorry, 11:28. "F told --"
Q Can you tell us, this seems to be a separate entry, where does this come from? This is the next day.
A This is Mr. Kyle again. "F told John," John was another AP reporter working with Mr. Kyle on a story they were trying to develop, "that LB," Lloyd

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Bentsen, "was provided unredacted TR," which is transcripts, "on the 22nd. There is a parenthetical note on record." That indicates Mr. Kyle had said that statement was made to him, or to John on the record by Francine.

The next entry is "J. Wilson on record in general way on related" --

Q Is it "related" or "redacted"?

A Redacted, it is redacted "info. H says CL," which stood for the Clintons, "would be more than W," with a circle, which is my designation for the word "witness," "gen," which stands for general, "description on where RTC investigation was going and LB and WH had minute-by-minute basis." I think that word is "had," a minute-by-minute basis.

Q What does that mean, "minute-by-minute basis"?

A That the allegation -- again, these are allegations, that the reporter was relaying to me is that Secretary Bentsen and the White House were told on a contemporaneous basis what was going on in our investigation.

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Q And what did you say in response?

A I just listened. I was not responding.

Q What's the next entry?

A He then asked me whether I did the redactions and said that he had been told that I had done the redactions, and I did confirm that, and I said yes, I did do the redactions.

And then I said "I told him that" -- I'm reading again from the notes. "I told him that the redactions were done on the a.m. of July 29." As I recall, he had someone alleging that the transcripts which went somewhere, I don't remember which destination, were redacted and that they were redacted prior to the 29th. And I said I did the redactions and they were not done until the 29th.

Q And now the next entry?

A The next entry is -- starts with "3:16-3:25." That is on the same day as the prior entry. Again, this relates what the reporter was telling me. "Cutler told them that he and LB had 'private agreement,' that info," which is information, "would be shared after LB announced OGE

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investigation and before hearings set. Cutler says nothing wrong with that."

Next entry is "F E-mails to Cesca," above that is written the word "Cottos" and question mark, "talking about early July citing Sherburne's request for transcripts. Ignores RTC OIG completely. F says nothing wrong with that."

Q After you had this information, what, if anything, did you do?

A Well, first of all, these were allegations as far as I was concerned.

Q I understand. After you got this report, what, if anything, did you do?

A I relayed the information to my inspector general and that was about it. Let me correct my last response. I believe I called the independent counsel, Alex Azar, who is an attorney with the independent counsel, and told him as well. I know I did. One more thing I did.

Q Okay.

A I went back to look to see if the statement on the Hanson transcript was right.

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Q Which statement on the Hanson transcript?

A The one that was attributed to Jim Wilson, that he says Hanson says could be more than witness.

Q Was that in the transcript?

A Yes. I had not remembered it.

Q And that had been redacted?

A Yes.

Q Do you know a Rick Doery?

A Yes.

Q Was there an occasion earlier this year when a subpoena was issued by the independent counsel for documents and Mr. Doery directed that certain documents not be turned over?

A I don't know that. I heard that that was true.

Q What have you heard?

A I had heard that that was true.

Q From whom did you hear it?

A Pretty much falls under the rumor category. I heard it within our office.

Q In the RTC inspector general's office or from Treasury?

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A Yes, RTC.
Q What were you told?
A My understanding was that the Treasury had gotten -- Treasury and/or its IG had gotten subpoenas from the independent counsel's office, as had we, concerning this investigation; that Mr. Doery, who was then acting counsel to the IG, had not turned over E-mails or communications from Ms. Kerner that were allegedly responsive to the subpoena.
Q Did you hear that they were E-mails from Ms. Kerner or E-mails that were critical of Ms. Kerner?
A Both.
Q And these would be Treasury E-mails, not RTC E-mails?
A Yes, that's right.
Q Anything else you know about that or that you've heard about that?
A I believe I heard at some point, I do not know which -- again we get a lot of rumors -- that the agents who were collecting information in response to the subpoena were critical of that.

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Q Critical of?
A Of those actions.
Q Of that direction?
A Yes. And I may be confusing subpoenas here between independent counsel and House Banking. And I believe I heard that at least one of the originators of the critical E-mails was distressed by that.
Q Do you know who that was?
A Mr. Cottos.
Q Is there anything else you've heard about it?
A I believe he communicated that stress to the independent counsel.
Q When you said the agents who came to collect the documents --
THE WITNESS: Off the record for a moment?
MR. CHERTOFF: Sure.
(Discussion off the record.)
BY MR. CHERTOFF:
Q Back on the record.
A He also I believe -- Mr. Cottos I believe also communicated that distress to Clark Blight, our

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AIGI.
Q When you referred to the agents who were involved in obtaining the documents pursuant to the subpoena, am I correct that you're referring to IRS agents who had been given the assignment within Treasury of complying with the subpoena and collecting the documents?
A That was what I was referring to, but I don't remember which subpoena that was or whether that was a request from House Banking or from you folks or whether that was a subpoena from independent counsel. I know at some point IRS agents became involved in collecting data.
MR. CHERTOFF: Excuse me for just a moment.
(Pause.)
BY MR. CHERTOFF:
Q Let me just ask you one last set of questions. Let me direct your attention to, again, the period of time between, let's say, June 23 and August 5 during the course of this investigation. Are you aware of any direct contacts between the

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office of government --
A I think you've got my chron and now I've got your document. Picked up the wrong one.
Q Oh, I'm sorry.
Are you aware, in this time period I made reference --
MR. PORTNOY: State the time period, please.
BY MR. CHERTOFF:
Q The time period from June 23 to August 5, during the course of this investigation, are you aware of any direct contacts between anybody at the White House and anybody at the Office of Government Ethics?
A I believe that -- well, there was the reference in Switzer's E-mail to me in talking to Jane -- relating a conversation with Jane Sherburne -- with Jane Ley, excuse me, where he referenced an attempt to enlist Ms. Ley's assistance on getting that certification as to completeness of the documents. I don't know whether she made that contact or not.

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Q That would have been Mr. Switzer trying to get Ms. Ley to help the inspectors general in getting a certification about the redactions from the White House documents?

A That is right.

Q Other than that, are you aware of any other contacts between OGE and the White House?

A Not that I can recall.

Q Other than what you've told us about, are you aware of any other information collected by the RTC during the course of this investigation into the White House/Treasury contacts, apart from what you've told us, that was transmitted to the White House or to any third parties outside of the inspectors general or the people in the Treasury you've talked to us about, or OGE?

A Not that I can recall, until such time as the Congress and the independent counsel started asking.

MR. CHERTOFF: I have no further questions.

MR. PORTNOY: I'm going to suggest that we

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take a few minutes to let Ms. Black take a rest, and also, I would like to speak with Mr. Kravitz.

(Recess.)

EXAMINATION

BY MR. PORTNOY:

Q Good afternoon. My name is Jim Portnoy. I'm counsel for the Democratic staff and I'll be asking you some follow-up questions this afternoon.

You stated earlier that, before you joined the inspector general's office of the RTC, you were employed at HUD; is that correct?

A That's correct.

Q And you were counsel to the inspector general?

A Yes, I was. My full title was assistant general counsel for the inspector general and administrative proceeding division. The longer the title, the more important the person. No, but one of the functions I had there was to serve the IG.

Q Were you formally employed by the inspector general?

A No, I was employed by the office of general

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counsel.
Q Your salary was drawn from the general counsel?
A Paid by the office of general counsel.
Q Your reviews were conducted by office of general counsel?
A With input from the IG, yes.
Q Would you say that's comparable to the situation Ms. Kerner had?
A No. Among other things, we had an MOU at HUD which expressly prevented me from communicating anything that had to do with IG work to the general counsel, and I strictly abided by that. When I was working for the IG, there was no question, my client was the IG, period.
Q So in other words, you had professional responsibility, you felt, to be loyal to the inspector general?
A That's correct. I often took positions opposing the general counsel.
Q And presumably other lawyers have that same responsibility?

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A I concur; yes.
Q Before you were counsel to the inspector general, you were a trial attorney?
A Yes, again with HUD. I did administrative work, MSBP, board of contract appeals, suspensions, debarment, all of which had administrative, ABA type hearings.
Q But you actually conducted hearings, or participated in them?
A I represented the department, yes.
Q And in connection with those hearings, would you routinely call witnesses?
A Yes.
Q And would you routinely prepare those witnesses for their testimony?
A Of course.
Q In preparing them for their testimony, would you use or make reference to transcripts of any sworn statements that they had made?
A If there were some, sure.
Q Would you use or make reference to sworn statements that other witnesses had made?

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A If they were available, yes.
Q Would you consider that to be essential to proper preparation of witnesses?
A If the material was available, yes. Typically it was not, in administrative proceedings, but occasionally.
Q But in order to perform your professional responsibilities, you tried to get those materials, didn't you?
A Of course.
Q And you would make whatever strenuous efforts you could to get those materials, wouldn't you?
A Within the bounds of ethics, of course.
Q The inspector general's office of the RTC is independent of the general counsel's office, is it not?
A Yes.
Q And it's independent of the agency at large?
A It is a part of the agency. By statute, the IG is subject to the general supervision of the

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head of the agency, so it is a part of the agency, but it has substantial autonomy within the agency. For example, under the IG Act, the head of the agency is prohibited from interfering with any investigation or the issuance of any subpoena, so it's kind of an odd creature.
Q Your independence is something that you take very seriously?
A Very.
Q Would you say that you consider that probably the most important feature of the inspector general's office?
A Certainly a very important feature, a critical feature, yes.
Q Have you ever encountered a situation where anybody in your agency tried to pressure you in your role as a member of the inspector general's staff?
A I can recall one instance where I had a conversation with somebody that I considered to have an aspect of impropriety to it, and I terminated the call.
Q Did you take any further action?

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A I wrote a memo to the file. I informed the inspector general, the deputy inspector general and the AIGI. The contact was a contact by a subject of one of our investigations. As I said, I considered it to have an element of impropriety. I did not consider it to be illegal. I considered it more to be stupid.

Q Did you consider the fact of the contact to be improper?

A No, not necessarily. And the contact came from an attorney who was, in my view although probably not in his, attempting to tell me how to deal with my client. I didn't like it, I didn't think it was proper, and I terminated the conversation.

Q Was this an attorney from within the RTC?

A Yes. It had nothing to do with the investigation.

Q I was confident that we would get to that if it did. So it was the substance of the conversation that you found disturbing?

A I would say that's -- substance and tenor.

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Q As opposed to the mere fact that this individual called you?

A That is correct.

Q There would be potentially legitimate reasons why someone like this individual might call you?

A That is correct.

Q So there are permissible and legitimate contacts between people in the agency at large and people in the inspector general's office?

A That is correct.

Q And those contacts could even, in some fashion, encompass matters that are under investigation by the inspector general's office, couldn't they?

A At times, yes.

Q So it's not your view, is it, that the simple fact that someone in an investigator general's office has a conversation with someone in the broader agency would be problematic?

A The mere fact that that occurs is not problematic, no.

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Q How did your office first become involved in the investigation that we've been discussing here?
A Back in the late winter -- well, I guess Mr. Altman testified sometime in March, did he not, of '94 that he had given this heads-up briefing to the -- to someone in the White House. Shortly after that, the Secretary of the Treasury requested his inspector general to provide assistance to the Office of Government Ethics in an investigation of the matter. And shortly after that we were contacted.
As I said earlier this morning, by either the Treasury -- I was contacted by either the Treasury IG counsel or Jane Ley with the Office of Government Ethics. Both of them contacted me in late March. I cannot remember which one of them called me first.
Q Do you recall whose idea it was to contact the RTC inspector general's office?
A I don't recall whether the Treasury IG suggested it to OGE or the other way around. One of them did.
Q Was it your understanding that both OGE and

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the Treasury inspector general's office were in agreement that your office should become involved?
A Yes.
Q Did anyone at the Treasury Department or OGE express any opposition to the involvement of your office?
A Not to my knowledge.
Q What were you told about the purpose of the investigation?
A OGE was to render -- or had been requested to render an opinion concerning whether the contacts between the Treasury and the White House violated any ethical restrictions applicable to federal government. And the OGE does not employ investigators, they normally get a set of facts handed to them with a question, does this or does this not violate a requirement or is this or is this not proper. They don't go out and do investigations.
So they needed an investigative entity to help them. Treasury IG was one of those entities, and we were another.

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Q What was your understanding of why the RTC and the inspector general's office particularly was brought in?

A There were not -- although the contacts that occurred were believed -- at that point I believe ultimately -- I believe this was correct -- were strictly between Treasury personnel and the White House, there was certainly an RTC component, a number of RTC employees who had to be interviewed. In addition, Mr. Altman at the time was the acting CEO of the Resolution Trust Corporation under an interim appointment by the President, so he had two hats that he was wearing, one of which was an RTC hat.

The feeling was, both at Treasury IG and at the Office of Government Ethics, that the RTC inspector general should therefore be involved in the interview process of RTC personnel and the gathering of materials that were relevant from RTC's point of view.

Q Was RTC's involvement ultimately limited to conversations with RTC personnel?

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A The RTC IG?

Q Yes.

A No, we attended all of the interviews. The interviews were typically done jointly with one Treasury agent and one RTC agent. I believe that was true in every case except two: One White House employee who was available only on a Saturday, and that person was interviewed by two RTC agents; and one former Treasury employee who was not available in the metropolitan area, the RTC inspector general has a field office in Texas and we sent two of our agents from Texas to interview him.

So in those two instances, they were only RTC agents. In all other instances, to the best of my knowledge, they were joint interviews.

Q So the RTC inspector general's office wasn't excluded from any aspect of the investigation?

A No.

Q There was no attempt to cordon you off or keep you out of the conduct of the investigation?

A Not the conduct of the investigation, no, there was not.

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Q What was your understanding of why Secretary Bentsen requested OGE's assistance?
A My understanding was that he wanted an opinion rendered as to whether the actions of any of his employees violated government ethical standards so that he could take appropriate action if they did.
Q Would it be fair to say, then, that this was essentially a management exercise by Mr. Bentsen?
A As far as I know. Now, initially, of course, when the investigation was requested, there had been no declination of prosecution. The special -- the independent counsel asked OGE to stop its review and it did so until such time as the independent counsel rendered his determination.
Q We'll come back to that a little bit, but sticking for the moment with Secretary Bentsen's request to initiate an investigation and an analysis, was it your understanding that Secretary Bentsen was the person who intended to make use of the results of your investigation?
A Well, he had requested an opinion from OGE, so in order to render that, OGE needed the results of

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our investigation, so we were looking to OGE.
Q To the extent, though, that you and OGE were functioning as a single entity in the compilation of information and the analysis of that information?
A The Secretary certainly was the end user of the OGE product.
Q And thus, at least indirectly, the end user of your work product as well?
A That is correct. And there was a possibility that there was some impropriety by RTC employees as well, so a second potential user would have been the RTC.
Q With respect to which Secretary Bentsen has an oversight role?
A Yes, sir, he's the chairman of the oversight board.
Q So it would be --
A Was.
Q So it would be appropriate for then-Secretary Bentsen to seek information with respect to the RTC as well?

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A Insofar as it dealt with the overall direction of the RTC, the statute creating the oversight board specifies it isn't to be involved in the day-to-day managing of the RTC, but as to overall policies and directions, yes, absolutely.

Q And would it be your view that, as chairman of the oversight board, if Secretary Bentsen was concerned about some sort of impropriety, that he would have an obligation to consider whether further action was appropriate?

A In any sort of a personnel action, I presume what the chair of the oversight board would do would be to bring it to the CEO's attention. That's day-to-day activities of the agency. Insofar as any of our work would indicate an overall dysfunction of the agency, an overall problem with the function of the agency, yes, the chairman of the oversight board would have cause.

Q But you don't have any problem with Secretary Bentsen receiving conduct about -- receiving information about conduct of RTC employees, do you?

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A I had concern about the timing of information being disclosed, but --

Q I'm sorry. We'll get to that but for the moment, the fact of the information being made available to Secretary Bentsen --

A The fact of it ultimately being made available to him I had no problem with.

Q Would it be fair to say that the only reason there was an investigation was because Secretary Bentsen requested one?

A I am trying to recall whether anyone from Capitol Hill had called for an investigation, and I don't know, but that certainly was -- the Secretary's request was in fact what prompted it; I'm hesitant to say the only reason.

Q So irrespective of whether anybody else was interested in an investigation being conducted, the actual precipitating event for this investigation was Secretary Bentsen's request?

A That's correct.

Q Did anyone at the Treasury Department or elsewhere in the Administration impose any limits on

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your investigation?
MR. CHERTOFF: Other than timeliness?
MR. PORTNOY: We'll --
MR. CHERTOFF: Just vagueness.
THE WITNESS: There were limits as to time. There were also limits on the questions which were asked which were imposed by Treasury without our agreement. I referenced that earlier. That dealt with the so-called second tier communications with the White House.
BY MR. PORTNOY:
Q As I --
MR. GIBSON: Can I ask a clarifying question, Pat? When you say that they were imposed by Treasury, are you referring to main Treasury or are you referring to the Treasury IG's office?
THE WITNESS: I was referring to the Treasury IG's office.
BY MR. PORTNOY:
Q I believe you said Mr. Cottos negotiated some limitations?
A Yes, that is correct.

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Q Which presumably you would have preferred to be consulted about?
A We would have preferred they didn't exist.
Q But this was not an action by anybody at main Treasury, was it?
A As far as I know, it was an action by Mr. Cottos.
Q It was simply a limitation on the investigation imposed by one of the investigators or agreed to by one of the investigators?
A That's correct.
Q Were you denied access to any witnesses?
A I do not believe so, no.
Q Were there any violations that you were told not to look into?
A No.
Q Was there any conduct that you were asked not to consider?
A With the exception of the second tier contacts, no.
Q Let me clarify. I don't mean that, in the context of the investigation, the investigators

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didn't make decisions about what they would or would not pursue. I mean from outside the two inspectors general's offices.

MR. CHERTOFF: Well, I have to object. In fairness, I think the earlier testimony was that the White House, the lawyers for individuals raised the limitation and it was agreed to by Cottos. That's not the same thing as the investigators.

THE WITNESS: My understanding was that those two negotiated, that's correct; that those two -- that an attorney for Ms. Nolan and Mr. Cottos negotiated this limitation. Then other attorneys for other deponents at the White House raised the same objections.

BY MR. PORTNOY:

Q Just to be clear, is it your understanding that these limitations were negotiated by Ms. Nolan's personal counsel?

A I believe that to be correct, but I don't know who it was, but I believe that is correct.

Q Ms. Nolan was represented by personal counsel, wasn't she?

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A That is my understanding. That is my understanding.

Q She was not represented, at least at her deposition, by the White House counsel's office, was she?

A That again is my understanding.

Q So would there be any basis to believe that it was the White House counsel that negotiated limitations?

A No. As I said, I believe it to have been her personal attorney.

Q I just want the record to be amply clear --

A I understand.

Q -- that this was not a limitation in some fashion imposed by the White House counsel's office, but rather by Ms. Nolan's personal counsel, acting in what he or she perceived to be Ms. Nolan's best interest.

A I believe that is correct.

Q Were there any relevant materials that you believe you were denied?

A No, I do not believe so. We were unable to

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get a certification that we had gotten complete production by the White House, but I know of no relevant materials that we were denied.

Q And you have no reason to believe that the White House production was conducted in any way other than they represented to you, do you?

A I have subsequently seen press reports that the Senate has complained -- I think it was the Senate, it could have been House -- that one of the committees, either yours or the Banking Committee on the House side, believed that some of the redactions did contain relevant information.

Q Relevant to the investigation of that committee?

A Yes, and I thought it was relevant to the briefings issue, but first of all let me make it very clear that I am talking about press reports. And I have not seen the documents, and I cannot describe to you what they are.

Q So you have no personal basis to believe that there was any relevant material that was denied to you?

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A Other than what I have seen in the papers, no, and I do not know whether what I have seen in the papers is accurate.

Q I believe you testified earlier that by the time your office became involved, the Office of Government Ethics had already met with the independent counsel's office?

A I don't know whether they met with them or whether it was a telephonic contact, but by the time -- by the time we met with the Office of Government Ethics, first on the 22nd of March, they had, I believe, a written request from then-Independent Counsel Fiske to suspend their work until such time as he had a chance to complete his.

Q Let me go back one step. When Secretary Bentsen first requested the assistance of the Office of Government Ethics, which led to your office's involvement, do you have an understanding as to the time frame in which he was seeking the analysis?

A Not at that time, no. I only recall the time frame coming up when Mr. Fiske had completed his work, which is not to say that there wasn't one

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earlier. I just don't recall there being one, though.

Q But you're not aware of any particular time limitation that Secretary Bentsen might have imposed or sought to impose when he made his initial request?

A No, not that I'm aware of. No, I'm not.

Q And now turning again to the inspector general -- excuse me, to the OGE's discussions with the independent counsel -- I'm afraid we're immersed in alphabet soup here -- what were you advised by OGE about their conversation?

A Well, by the time we met with them on the 22nd, they had been asked to suspend review of the matter and had agreed to do so.

Q Was it your understanding that -- strike that.

At whose initiation have the conversations between OGE and the independent counsel occurred?

A To the best of my recollection, the Office of Government Ethics contacted the independent counsel to find out if their review would impact on anything that the independent counsel was doing

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because the independent counsel had said he was looking at the matter. That's to the best of my recollection.

Q Do you have any reason to believe that anybody from outside OGE prompted that inquiry?

A No.

Q And I believe you just testified that the independent counsel made a request or expressed a preference that OGE delay its processes?

A That is correct.

Q Until when?

A Until conclusion of the independent counsel's work on the matter. There was a letter. I can't remember precisely how they phrased it, but that's essentially it.

Q Did you concur in OGE's decision to delay the investigation?

A Well, we were not involved in it at all, but I will tell you that we have done that precise -- have taken that precise course on a number of occasions ourselves. I mean, we're a criminal investigatory agency. We're an entity, very used to

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deferring administrative and civil actions until such time as a criminal action is complete, and we have deferred to the independent counsel ourselves on more than one occasion.

Q So you think it was appropriate?

A Yes, I do.

Q Some months later, the independent counsel notified either OGE or your office that his investigation was sufficiently advanced that you could pursue your investigation?

A Not our office. He notified either Secretary Bentsen or OGE or both and held a press conference, all in the same day.

Q It was no secret?

A It was no secret. And it was well known for a week or 10 days ahead of that time that that time was rapidly approaching.

Q And in fact, you began preparation for the investigation prior to the independent counsel's formal announcement, did you not?

A That is correct.

Q Do you recall whether Secretary Bentsen

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notified the office of general counsel upon having himself received notice from the independent counsel?

A Do you mean OGE?

Q I'm sorry, OGE.

A On the 30th I believe, June 30, Secretary Bentsen requested the IG, and perhaps OGE as well, to begin their work again, and on that same day, sent a letter to Mr. Ryan, who was the acting CEO of RTC, or deputy CEO. I said earlier he was acting. On that -- yeah, I believe that's correct, he was acting on that date, and he was also the deputy. That he request our assistance in the investigation as well. All of that happened on June 30.

Q In fact, it happened -- so on the same day that the independent counsel lifted the bar or the implicit bar on your proceeding, Secretary Bentsen contacted OGE and requested that the investigation proceed?

A He contacted OGE or the Treasury IG or both and contacted our deputy CEO as well.

Q Took affirmative steps to insure that the investigation begin as quickly as possible?

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A That is correct.
(Mr. Chertoff left the deposition.)
Q At that time, did Secretary Bentsen express any kind of preference or were you made aware of any kind of preference as to the duration of your investigation?
A Yes. He wanted the reports before the hearings that were being scheduled up on Capitol Hill.
Q Was that in the nature of an expressed preference?
A Yes, I believe in writing. I believe in his requests he referenced that. If not, he certainly communicated it down the chain of command to his IG.
Q He never actually gave you a date by which you needed to be finished, did he?
A No, I don't believe so.
Q Did anybody else?
A As I said, the Treasury IG was aiming to get a report out before the beginning of the hearings, and the date that they had said was the

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Friday before the hearings started. We got a draft by then. We did not get a final.
Q Did anybody outside of the three entities engaged in the investigation give you a specific date by which you needed to be finished?
A Other than the start of the hearings, which were scheduled to start on the 26th, no, no.
Q Nobody had the authority to instruct you to be finished by that date, did they?
A That's correct, no.
Q Did you have any internal discussions among the agencies as to what you would do if you weren't satisfied that you were complete?
A We continually expressed concern at the time frame, given the amount of work that had to be done. We also said that we would do our best to get it done before the hearings.
As I said, we considered it a difficult request, a request that concerned us but we understood why it was being made, and we also wanted to get our information to Congress at least during the course of the hearings, not come in two months

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later.
So there were concerns but we were trying to get it done as fast as we could.
Q But certainly nobody said to you, if it's not done by such-and-such date, don't bother?
A No.
Q And presumably there were times when you considered what you would do if you didn't believe the investigation to be complete?
A Yes, I suppose that's right. I know it's right.
Q Was it your view that you would release the results of an incomplete investigation?
A No.
Q So in other words, you would take whatever time you had to take to complete the investigation?
A That is correct.
Q And despite your concerns about time, you knew that you retained that option, did you not?
A That is correct. And I believe we completed the investigation.
Q We'll get to that too. Would it really be

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fair, then, to say that the rapidity of your investigation, the pace of your investigation, was an accommodation in part to Secretary Bentsen's preferences, but was not, in any way, an instruction from Secretary Bentsen?
A From the RTC inspector general's point of view, I would agree with that.
Q You just stated that in your estimation, the investigation was completed?
A That's correct.
Q Was there anyone you couldn't interview as a consequence of time pressure?
A No.
Q Did the White House cooperate in making witnesses available to you rapidly?
A Yes, they did.
Q Did the Treasury Department?
A Yes.
Q Did RTC?
A Yes.
Q Did anybody fail to cooperate?
A There was one, the gentleman that I

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mentioned who lived in Texas and was a former employee, no longer under the control of the government, did not initially cooperate, but he ultimately did.

Q But it's fair to say that --

A And he was not under the control of the government.

Q I guess a lot of people would like to be that way.

(Laughter.)

Is it fair to say that every witness who was a current government employee or was otherwise under the control of the government was made available to you?

A That is a fair statement.

Q And was made available to you with the intention of facilitating the completion of your investigation?

A That is a fair statement.

Q Was there any other nontestimonial evidence that you were precluded from gaining access to as a result of the time frame?

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A Not to my knowledge.

Q So would it be fair to say that, despite the relatively compressed time frame, you spoke to everyone you needed to speak to and got all the evidence you needed to get?

A I believe that is correct.

Q Do you think you would have collected any other evidence or spoken to any other witnesses if you had more time?

A I am aware of no evidence we didn't collect or any witnesses we did not speak to that I would say we needed to.

Q Even from your current vantage point?

A That is correct.

Q Did your office, in conjunction with the Treasury inspector general's office, draw any conclusions in your report?

A No, the report was a factual one, recitation of facts. OGE was the entity which opined.

Q So you viewed your role as purely investigatory?

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A That's correct.
Q And you viewed OGE's role as what?
A OGE was the entity which was to render an opinion on the propriety of conduct based on the facts that we found.
Q That's about how they described it.
But you viewed their role as distinct from yours?
A Yes. We were working very closely, as we had to. They certainly gave us guidance as to the sorts of facts that we needed to elicit in order for them to render an opinion, so we worked very closely with them but yes, we were distinct.
Q And did you view the Treasury investigator general's office as having the same role as yours?
A Essentially, yes.
Q They also did not perform the analysis?
A Yes, that is correct.
Q They just performed the investigation?
A That is correct.
Q I believe you stated earlier that in your view, the investigation was completed as much as it

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could be?
A That is my view.
Q In other words, it was not OGE's role to take personnel action or make other managerial decisions based upon this analysis, was it?
A No.
Q That was the Treasury Department's role?
A Had there been findings, whoever employed the person against whom there were findings would have had that responsibility.
Q I gather what you're suggesting is that the RTC might also have had responsibilities in that regard?
A Or the White House.
Q When did you, "you" meaning the inspectors general's offices collectively, take your last deposition?
A The last one was Mr. Ludwig. I can't remember the date.
Q Do you recall the date of the last witness with the exception of Mr. Ludwig?
A The last deposition with the exception of

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Mr. Ludwig was taken prior to the 22nd, which was the date on which the draft report was submitted to the secretary, so it was prior to that time. There were questions asked after that time of other witnesses, no further depositions.

Q Do you recall which witnesses were asked further questions?

A I believe Mr. Roelle, an RTC employee. I think there was another -- Mr. Katsanos, also an RTC employee. That's all I can recall.

Q Do you recall whether any White House employees were asked additional questions?

A I do not believe they were.

Q Do you recall whether any Treasury employees --

A I do not believe they were, except for Mr. Ludwig.

Q I believe you testified earlier that witnesses were provided with copies of their own depositions on the 18th of June?

A I didn't testify as to a date but I believe that date is correct. I believe that --

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MR. O'CALLAGHAN: I didn't mean to interrupt you, but did you say June or July?

MR. PORTNOY: I said June, but I didn't mean it.

THE WITNESS: Thank you. 18th of July I believe was the time at which we started distributing transcripts. After that, of course there were witnesses who were being deposed after that time.

MR. GIBSON: Let me ask a clarifying question. Are you talking about transcripts provided by the RTC IG or provided by somebody else?

THE WITNESS: I have no idea of what the Treasury did with its transcripts. I am talking the RTC inspector general handled the distribution of transcripts to RTC witnesses, and we commenced that on the 18th of July. We did not give transcripts of Treasury witnesses to those witnesses, nor of White House witnesses to those witnesses. That was done by the Treasury.

BY MR. PORTNOY:

Q Do you have any reason to believe that the Treasury inspector general's office began

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distributing transcripts to individual witnesses any earlier than you did?

A I don't know. I don't know.

Q Well, let's move on to the next possible significant date, which is the 22nd of July. I believe that was the date that Secretary Bentsen was provided with a draft of the report?

A That is correct.

Q And I believe you've testified that, as of the 22nd of July, all the depositions except Mr. Ludwig's had been taken?

A That is correct.

Q And all the witnesses to whom questions were to be addressed had already had those questions asked, with two exceptions?

A We did not know that on the 22nd, but as things progressed, that was true. On the 22nd, we were -- on the 22nd or sometime during the course of that weekend, the Ludwig contact had come to light so we expected to have to interview him, but as to whether or not other witnesses would have to be interviewed, that was going to depend on what OGE had

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to say to us and our review of things that were going on over that weekend.

Q But notwithstanding the fact that you retained the right to seek additional testimony or evidence, you didn't actually decide to do so --

A No --

Q -- with the exception of Mr. Ludwig?

A And the two RTC employees that I mentioned. We did not know that at that time but that is ultimately correct. We expected to have to ask some follow-up questions based on OGE comments. We did. Those comments were exclusively directed to RTC employees, to the best of my recollection.

Q In view of the fact that your questioning of Treasury Department witnesses was completed prior to the provision of the draft to Secretary Bentsen, as a practical matter rather than as a matter of process or concern about proper or improper procedures, were the results of your investigation altered or affected in any way by the fact that Secretary Bentsen received a draft?

A We were told on the 21st or 22nd that those

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transcripts were already in the hands of office of general counsel of Treasury. I don't know when they got them, what they did with them, or what impact that might have had. That is a concern.

As to your precise question, I do not believe that the way things worked out, that the provision of that draft to Mr. Bentsen had any impact.

Q I believe you also testified earlier that you learned in late July that the White House had been given copies of transcripts?

A I learned on July 26, yes.

Q Do you recall the date that the White House received the transcripts?

A I do not know the date the White House received the transcripts. I was told they were sent over on the 23rd, sometime after 10:30 at night.

Q Assuming that to be accurate, would it also be true that the results of your investigation were not affected by the release of the transcripts to the White House?

A I would agree with that statement with

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regard to the results of our investigation. I have much more -- greater concerns about the results -- any possible impact on RTC's criminal investigation because of the material that was unredacted from those transcripts.

Q But for the moment, directing your attention precisely to your investigation, was there any detrimental effect on your investigation by the release of those transcripts on the 23rd of July?

A On the substance of our investigation, no, I do not believe there was.

MR. O'CALLAGHAN: I would like to make a clarifying comment if I could. I believe the question just asked if release of the transcripts on the 23rd had any effect on their investigation, but I believe Ms. Black had testified that she had been told they were released on the 23rd, but she didn't in fact have knowledge that they were released on the 23rd; is that correct?

THE WITNESS: That is correct.

BY MR. PORTNOY:

Q That's fine. Just to close the circle and

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make it absolutely clear for the record, were there any witnesses that you would have deposed, or any questions you would have asked, or any information that you would have collected that you decided not to collect or question as a result of either the provision of the draft report to Secretary Bentsen on the 22nd of July or the release of the deposition transcripts to the White House on the 23rd of July?

A No.

Q Earlier you expressed some concern about the fact that the general counsel's office at Treasury reviewed the draft of your report.

A Yes.

Q I believe you said that they provided you with proposed edits?

A Yes.

Q Were you or anybody in either your office or the Treasury inspector general's office compelled to accept their proposed edits?

A No.

Q Did you collectively decide for yourselves whether those edits should be accepted?

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A Yes.

Q In your judgment, did the edits you accepted improve your report?

A I have some qualms with the term "accepting of edits." Their comments and their suggested edits resulted in changes which, as I recall, were primarily to increase the content, the length of a given description of a set of contacts. We would quote directly from the transcript as opposed to paraphrasing. So I don't know that we accepted the edits.

Q Would you agree that the final report is more accurate as a result of your having had access to Treasury's comments?

A Not necessarily, no, I would not. I don't think our report was inaccurate to begin with, but it got longer.

Q More precise?

A It got longer and it contained precise quotes as opposed to paraphrases. I did not necessarily agree that the paraphrase was incorrect but there's certainly nothing wrong with having a

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quote.
Q Were there any proposed edits from the office of general counsel that you viewed as improper as opposed to just not your preference?
A There were some I thought were wrong. There were some things that they felt we should characterize a given set of words one way and we didn't agree with it.
Q And of course you made the final decision?
A That's correct. We didn't incorporate any of those.
Q So the report as it stands doesn't reflect any of those errors that the Treasury Department might have suggested?
A No, no, it does not.
Q Do you have any reason to believe that the Treasury Department was seeking to create inaccuracies?
A No.
Q Or to hide relevant information?
A No.
Q I believe you said earlier that, if

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anything, the Treasury participation resulted in the report being longer?
A Yes.
Q That's usually what happens when committees get involved.
Did you view any of Treasury's comments, in any way, as an attempt to hide the ball or mischaracterize your findings based on improper motives?
A No.
Q There were occasions that you didn't agree?
A There were occasions when I did not agree.
Q But you didn't perceive those disagreements as motivated by improper motives, did you?
A I perceived some of the comments, and I think it was perceived by others in the investigation, as putting the Treasury general counsel's office in a somewhat better light, but if we didn't think they were accurate, we did not accept them. And I don't -- as I understand the term "improper motives," no.
Q Nobody was trying to hide any illegal

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conduct or any unethical conduct, were they?
A No.
MR. O'CALLAGHAN: That you're aware of.
THE WITNESS: That I'm aware of; to the best of my knowledge, no.
MR. KRAVITZ: Comments from the cheap seats back here.
(Laughter.)
MR. KRAVITZ: There's a rule if you're outside a one-mile radius, no commenting.
(Laughter.)
BY MR. PORTNOY:
Q Going back to the very beginning of our discussion, what was your understanding of the conduct that the Office of Government Ethics was requested to analyze?
A My understanding was that they were requested to analyze whether the series of briefings or -- "exchange" is a bad word -- the transmission of information concerning an underlying RTC investigation by members of the Treasury Department to employees of the White House constituted any

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violation of any government ethical standards.
Q As to whose conduct was OGE requested to draw conclusions?
A The request came from Secretary Bentsen, and as far as I know, he directed them to Treasury Department employees. Of course, one of those employees, Mr. Altman, was serving as the head of RTC. He had two hats.
Q Would you have conducted your investigation in any materially different way if OGE's mandate had been to also opine with respect to the conduct of RTC personnel?
A Well, to the extent that Mr. Altman was an RTC employee, it did. The request did encompass that. No, I don't believe the inclusion of RTC personnel in that mandate would have changed things. We were looking at their conduct as well.
Q Were you also looking at the conduct of White House officials?
A To a degree, yes.
Q When Mr. Chertoff was asking you questions, I believe you discussed the process of redacting the

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transcripts?
A Yes.
Q Just to provide some context, would you tell me again who did the actual redactions?
A There were three people from RTC who started in the early afternoon of the 28th, marking portions of the transcripts which contained information that they thought could or perhaps should be redacted. I did the physical redactions on the 29th.
Q I see. So the process was that the individuals working with the RTC office of general counsel --
A Yes.
Q -- marked the transcripts in some fashion and then you decided whether to actually redact the material?
A That is correct.
Q And those individuals were?
A Mr. Orr, Mr. Binkley, and I believe Ms. Carter was the third one. I'm not 100 percent certain of that name.

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Q That would be consistent with what we've heard before, so it may in fact be the case.
A Okay. I knew Orr and Binkley before that time, and I'm certain it was them.
Q Did Ms. Kulka participate directly in the redaction?
A No, she didn't sit down with a highlighter and yellow Post-it notes. She did, however, participate insofar as there were numerous -- there were phone calls, I don't know about numerous, there were phone calls to her to get calls in certain cases as to whether a type of information was such that they wanted to pursue redaction.
Q Would you explain again what the criteria were for redacting information?
A Yes, we were using FOIA criteria. We were trying to produce a report that would be publicly available under FOIA statutes and Privacy Act statutes.
Q Just to stop you, so it was your intention to produce a report that would be publicly available?
A That is correct, that was the purpose of

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the redactions at that point.
Q Was it always your intention, from the beginning of your investigation, to produce a report that was publicly available?
A It was always our belief that that report would eventually become publicly available because all such reports are subject to FOIA, and we certainly would have expected a FOIA in due course, the minute after it was issued. Some reporter, somewhere.
It was certainly not always our intent to issue a report that was publicly available on the 29th. That happened at the last minute.
Q But during the course of drafting your report, you always understood that the report was likely to become publicly available?
A Of course; in some form or another, all of our investigative reports are FOIAble. This would have been no exception.
Q Only in Washington is "FOIAble" a word. And worse still, everyone here understood you.
(Laughter.)

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Okay. So you stated that the principal criteria that was exercised in redacting the transcripts was whether the material would be subject to release under the Freedom of Information Act?
A That is correct, within the understanding that many of the exemptions and the exercise of many of the exemptions are discretionary, we certainly exercised that discretion in favor of release.
Q In favor of release?
A Yes, where possible.
Q Were there any other criteria that were utilized?
A As I said, the Privacy Act, FOIA and Privacy Act tend to go closely together. Individuals' names being mentioned was certainly relevant.
Now, under FOIA, the criteria are varied. Deliberative process was one of them that was used in redacting. Privilege, certainly, both attorney-client and attorney work product. And the FOIA exemption known as B-7, an exemption to protect ongoing investigations, was a particularly vital one

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to RTC.
Q Just to be clear, the Freedom of Information Act doesn't compel that you withhold information, does it?
A No, it does not. Privacy Act does.
Q But the FOIA permits an agency in its discretion to withhold information that fits within certain categories; is that correct?
A That is correct. The Privacy Act compels you to do so.
Q So at least under the FOIA there was no legal impediment to the RTC releasing any of this information?
A Had RTC decided to not claim any privileges or exemptions under FOIA, it could have waived them. As to the individuals' names, that's a different matter. That's Privacy Act.
Q Was there any special effort made to remove material pertaining to the President?
A Insofar as the President was connected with the referrals, that data would have come out in some instances. There was a -- the only major

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disagreement between the IGs and RTC general counsel did, in fact, involve the name of the Clintons. The RTC office of general counsel had requested redaction of any portion of the transcript which referenced the Clintons as witnesses in the Madison referral.
We did not redact that information. That was publicly released. The reason for that was that we were asked to look at the conduct of Treasury officials in communicating that very information to the White House. Mr. Cutler had referenced that information, their status as witnesses, in his testimony before, on the 26th. He had confirmed that.
Q But in the end, then --
A We released it.
Q To the extent there was a conflict as to whether to release information pertaining to the President, the conflict was revolved in favor of disclosure?
A No. To the extent that there was a disagreement over whether to resolve information identifying the Clintons as witnesses in this

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criminal referral, that was resolved in favor of disclosure.

Q But with your more precise definition of the type of information involved, I just want to be clear --

A That information was released, and you will see a footnote in the transmittal of our report which says that that is exactly what happened, that we had a disagreement with the RTC office of general counsel and that we were releasing the information. RTC said it had never confirmed that and therefore it should not be released.

Q Were there any -- strike that.

Would it be your view, then, that the same criteria were used to determine whether to release information pertaining to the Clintons as to any other individuals?

A That is correct, except that where the Clintons were identified as witnesses, that was released because of the very nature of the investigation and the fact that their attorney had confirmed it.

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Q So the only instance in which the Clintons were not treated like everyone else the information pertaining to them was released rather than withheld?

A That is correct, that is correct.

Q Would it also be true that the same criteria were applied in determining whether to release information pertaining to other White House officials?

A Yes.

Q Other Administration officials?

A Yes.

Q So there was no effort of any kind to conceal information pertaining to people in the Administration, was there?

A No.

Q If anything, the contrary, it was your intent to make information public?

A It was our intent to make information public to the extent that we could do so without compromising RTC's underlying investigation, without risking the compromising of the underlying investigation.

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MR. PORTNOY: Let's take a break.
(Recess.)
(Mr. Kravitz left the deposition.)
BY MR. PORTNOY:
Q Back on the record. Returning for a moment to the subject of the redactions, could you clarify how you dealt with information that was already on the public record?
A Information concerning the criminal investigation which had been discussed in the press, which had been discussed even on the floor of Congress but not ever confirmed by the RTC was redacted. For example, with regard to the number of criminal referrals, I have heard personally and seen in print seven, eight, nine, 10, 19, 21 -- I have seen various numbers. RTC has never confirmed any, therefore the number of criminal referrals was redacted. RTC had confirmed dates of criminal referrals, and therefore those were not redacted.
Q Had the RTC confirmed that the Clintons were going to be or potentially could be witnesses?
A No, it had not, and that is why they asked

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us to redact that. We felt that because that was the very piece of information which caused our investigation, because it had been confirmed by the White House counsel that there was no way that that could be redacted in any meaningful fashion from our report and the RTC disagreed with us on that to the end.
Q Was it your judgment that the information could be released without impeding the RTC's investigation?
A Yes.
Q And you wouldn't have released it, I assume, if you'd thought that it would impede the RTC's investigation?
A That's correct. And RTC did not argue as such that the release of that particular piece of data would harm their investigation. What they said is we have not confirmed it, therefore you should not release.
Q Why, if you know, did the RTC not believe that release of this information would harm their investigation?

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A I didn't say that. I said they didn't argue that it would. I think RTC recognized that that particular piece of information, having been confirmed by the White House counsel, was well and truly in the public domain.

Q So there's a continuum of some sort, the more that information is in the public domain, the less likely it is that the release of that information would impede the RTC's investigation?

A If I may use a FOIA analysis, there comes a point at which, even if a release has not been authorized or confirmed by the agency, that something comes to be so far in the public domain that you will not -- one will not be able to withhold it any longer under FOIA, even as a discretionary matter. I thought we were there with that piece of information.

In addition, I also thought that it would not impede their investigation, considering how the White House counsel had already confirmed the existence of it. RTC was simply saying -- they were applying an absolute standard: Unless we have

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confirmed it, we want you to exercise your discretion and redact it.

Q Would you characterize that as a prophylactic standard as opposed to a case by case standard?

A Not necessarily. That was dealing with a criminal investigation -- an active, open criminal investigation. I can understand exactly why they took that stance, and it was very much on a case by -- on this case.

Q Was there any other information where you considered the extent of public knowledge about that information in determining whether to redact it?

A Not that I can recall. That was not a particular factor. The issue on the underlying criminal investigation was that RTC confirmed it. There were certainly areas which had initially been flagged by RTC legally which were not redacted. Those primarily -- and, you know, we reached agreement on those. Those, for example, involved renditions of a discussion with the press about the criminal investigation, so yes, it referenced the

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criminal investigation but because it was a discussion with a reporter, we did not redact. That was -- would not be redactable under FOIA, although RTC legal initially in going through flagged everything. And I said hey, wait a minute, that's a discussion with a reporter, how is that privileged, and they said right, it isn't.

Q It would be hard to characterize conversations with a reporter as out of public domain?

A But we reached consensus on those types of issues. The only issue on which RTC legal just flat-out disagreed with us, and asked quite frankly that we say so and we did in our report, was the issue of naming of the Clintons as witnesses.

Q At the risk of --

A Being here all night?

Q Well, I was going to say tedium, but I would like to go through a few of these transcripts with you.

MR. O'CALLAGHAN: Could you identify for the record what pages and --

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MR. PORTNOY: Oh, absolutely. Absolutely. In fact, why don't I make available to you both redacted and unredacted copies so that you can actually draw some conclusions.

I would just like the record to reflect that what I will be showing the witness are copies of deposition transcripts as appended to a copy of the report and the bound volumes are the redacted versions and the stapled volumes are the unredacted versions. Also, the bound volume has tabs on it. Those tabs reflect pages where there are redactions.

MR. O'CALLAGHAN: The tabs reflect redactions as identified by minority staff?

MR. PORTNOY: That's correct. To be precise, I went through these things and tabbed them.

BY MR. PORTNOY:

Q I wish these were easier to work with. I apologize, it's going to take me a second.

I have given you the deposition of Clifford Sloan.

A Yes.

Q I've given you both a redacted version and

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an unredacted version. I would ask you, please, to turn to page 7.
A Yes.
Q I believe there's a redaction at lines 24 and 25 that continues over to the following page, page 8, and encompasses all or part of lines 1 to 14.
A Yes.
Q There's also a redaction on page 9, encompassing lines 6 through 9.
A Yes.
Q Could you review those redactions and give us some indication why you chose to redact that information?
A Yes. This is a description of a conversation which Mr. Sloan had with Ms. Hanson. At the outset, the lines on 24 and 25 were redacted because of the numbers that are referenced on the criminal referrals.
(Discussion off the record.)
MR. GIBSON: Back on the record.
THE WITNESS: Is it possible to strike the

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reference to the name that I had then he name?
MR. PORTNOY: That's fine.
MR. O'CALLAGHAN: Certainly.
MR. PORTNOY: That would be great.
MR. PORTNOY: If we might agree, in fact, we can probably strike everything following your discussion of what appears in the first redaction.
THE WITNESS: As to the press inquiries?
MR. PORTNOY: Right. Following the discussion of the press inquiries, any record.
MR. O'CALLAGHAN: That's fine.
MR. PORTNOY: Great.
THE WITNESS: After the reference to press inquiries, which was not redacted, there is a reference to persons who are mentioned in the referral as potential subjects. There is then a discussion in the next paragraph again as to potential subjects that is redacted, and there is a reference to witnesses that is not redacted for the reasons I just stated earlier.
MR. GIBSON: Pat, if I could just interject for the record that is the paragraph shown as line 6

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through 10 on page 8 of the transcript.
THE WITNESS: The redactions on lines 13 and 14 are, again, subjects of a referral or potential subjects of a referral.
BY MR. PORTNOY:
Q In your estimation, was the information redacted from this transcript public?
A There had been public speculation concerning that information, but I do not know that the information itself was public.
MR. GIBSON: Let me ask a clarifying question here, too. When you say "public," Jim, you mean public at the time of this transcript being redacted in the end of July 1994 --
MR. PORTNOY: Yes, that's correct.
MR. GIBSON: -- as opposed to now?
MR. PORTNOY: Yes.
THE WITNESS: That is how I answered the question, with that supposition.
BY MR. PORTNOY:
Q Is there any reason to believe that Mr. Sloan had unique access to or particular access

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to RTC internal information?
A Yes, someone told him. He said they did, and he -- yes.
Q Mr. Sloan didn't work at the RTC?
A No, he should not have had the information.
Q I believe you testified that at least some of this information had been the subject of public reports or public discussion?
A Public speculation.
Q Is that also true with respect to the information in the redacted portion on page 9?
MR. GIBSON: I think while you're reading it, Pat, let the record show that on page 9, lines 6 through 9 were redacted from the original transcript.
MR. PORTNOY: Thank you.
(Witness reviewed the document.)
THE WITNESS: That is true of lines 6 and 7. Quite frankly, it looks to me like lines 8 and 9 were redacted in error.
BY MR. PORTNOY:
Q Without the antecedent they don't mean much?

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A That's right. We could have stopped with 6 and 7. In that regard, I will point out that both from RTC's perspective in proposing the redactions and from mine in doing them, we were under exceedingly tight time constraints so I think you will find a few of these errors.

Q You may find a few in connection with this proceeding for the same reason.

Let me ask you now to turn back -- you will find those are alphabetical -- to the deposition of Mr. Roelle.

A Shall I return Mr. Sloan's deposition to you?

Q Please do.

MR. GIBSON: This is Roelle's deposition on July 6?

BY MR. PORTNOY:

Q That's correct. Would it be correct to state that there are redactions on page 11 and also on page 19?

A There are redactions on page 11. Let me move to 19. Yes.

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Q And referring to the unredacted copy that I just handed you, could you please explain to me the basis for those redactions?

A Once again, those redactions on page 11, lines 11, 17 and 23 all deal with numbers of referrals. On page 19, line 19, the same is true.

Q And I believe you testified that there had been press reports concerning the number of referrals?

A Yes, multiple numbers, some of which are not correct.

Q But it was no secret that there were referrals?

A It was no secret that there were referrals.

Q And it was no secret that there were a number of them, more than one or two?

A I believe that is correct. More than one, anyway.

Q Now I would ask you to turn to the deposition of Mr. Knight, which should be --

MR. GIBSON: Are these in order?

BY MR. PORTNOY:

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Q They're in alphabetical order, although not all the depositions have redactions. While your counsel is looking through the booklet to find the appropriate deposition, I would just ask you to address that on the record. Not all the depositions were redacted, were they?
A No, they were not, not all of them had information which RTC considered privileged.
Q Do you recall offhand how many depositions were taken?
A I'm sorry, I don't.
Q Do you recall offhand how many depositions actually contained redactions?
A No, I don't.
MR. GIBSON: We found Mr. Nye's transcript.
BY MR. PORTNOY:
Q Would it be consistent with everyone's memory that there were 27 depositions taken?
A That may well be true. That sounds about right. That may well be true.
Q Would it be consistent with your recollection that there were 12 depositions in which

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there were redactions?
A That also sounds about right. I would literally have to go count to make sure, but that sounds about right.
Q I've just counted.
A Okay.
Q Turning to pages 14 and 15 of Mr. Nye's deposition, in particular to lines 23 through 25 on page 14 and the carry-over at the top of page 15 and then lines 20 through 25 on page 15 and the carry-over on page 16, would you agree that there are redactions in those sections?
A Certainly, yes.
Q Would you please take a look at those redactions and --
MR. GIBSON: We don't have a copy of the unredacted version.
BY MR. PORTNOY:
Q You do now.
A Thank you.
Q And tell me why you redacted those portions.

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A On page 14, there is a reference to persons named in the referral. I could not ascertain in what capacity, and it was redacted.
Q In other words, it wasn't clear to you --
A It was not clear to me.
Q -- why that person or persons were named in the referral?
A That is correct.
MR. GIBSON: And that references lines 23 through 25 on page 14; is that right?
THE WITNESS: Yes, it is. It continues --
BY MR. PORTNOY:
Q Would you agree that there had been public reports indicating that the individuals named in these lines were named in referrals?
A There had been --
Q Either as subjects or witnesses?
A There had been public -- when you say public reports, I'm hesitating on that. I had seen -- I had seen that in The Washington Post.
Q Right. That's what I meant by public reports, media reports.

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MR. GIBSON: Off the record for a second?
MR. PORTNOY: Sure.
(Discussion off the record.)
MR. PORTNOY: During the off-the-record discussion, we've come to the conclusion that it will be difficult, if not impossible, to build a meaningful record with respect to the purpose underlying these redactions without reading into the record materials that were in fact redacted. As a consequence, we've decided to forego further discussion of the specific redactions and to return to some more generalized questions.
MR. O'CALLAGHAN: At this time.
MR. PORTNOY: Indeed.
BY MR. PORTNOY:
Q While we were searching for one of the redacted transcripts which we will now not refer to, I believe I asked you if you recalled how many depositions were taken.
A Yes.
Q And I believe you said that it was not inconsistent with your recollection that it was about

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27?
A Yes. I said I didn't know for sure without going back and counting them, but 27 sounds about right.
MR. O'CALLAGHAN: I'm sorry, is that 27 depositions or 27 witnesses?
MR. PORTNOY: 27 depositions encompassing 24 witnesses, I believe.
BY MR. PORTNOY:
Q Does that sound right?
A There were multiple depositions of certain witnesses, yes.
Q And I believe you also testified that it would be consistent with your recollection that there were redactions in approximately 12 of those depositions?
A That is approximately right.
Q Understanding that each deposition is of different length, could you estimate in general terms what portion of the depositions or what percentage of the depositions were actually redacted?
A Very small, very small amount. Percentage,

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I don't know, but a very small amount. Most, as you -- a goodly number and perhaps an actual majority were not redacted at all. Of those which were redacted, there were minimal redactions in each of those. Certainly -- I don't think any single transcript even approached a 10 percent redaction.
Q For example, we looked at Mr. Roelle's deposition not too long ago --
A Yes.
Q -- would it be fair to say that there were just a handful of short redactions?
A Yes.
Q In a deposition that consumed a number of pages, I can't tell you precisely, but --
A It was a fairly lengthy deposition and the redactions were few.
Q And would the same have been true with respect to Mr. Nye's deposition, for example, which we just looked at?
A That is correct.
Q Or Mr. Sloan's?
A That is correct.

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Q So would you agree that as a general proposition, the redactions consumed a relatively small portion of the depositions?
A Yes.
Q Was it your intent in performing the redactions to avoid redacting as much material as you could, in other words, to make public as much as you could?
A Our intent was to disclose as much material as we could without jeopardizing RTC's privileges.
Q Just to close the loop, again, I assume you would agree that that constituted the vast majority of the material in the depositions?
A The unredacted and publicly available -- the unredacted material which was made publicly available was the vast majority, yes.
Q I think we'll move on past the redactions. Actually let me ask you one more question. Would it be your view that a significant portion of the material that you redacted was redacted because the RTC had not formally confirmed or denied that information?

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A The material was redacted because RTC considered it still privileged. At least one element in RTC's rationale was that they had not publicly confirmed it.
MR. O'CALLAGHAN: If you could also define what you mean by "significant." Significant in size, value? It's kind of unclear.
BY MR. PORTNOY:
Q I was referring to quantity rather than quality.
A Yes, the answer stands as to quantity.
Q During your discussion of the meetings on July 5, I believe you indicated that there were two meetings?
A Yes.
Q One at 10:00 in the morning and one at 4:30?
A Correct.
Q During the initial meeting, the morning meeting, I believe you testified you had a discussion about whether White House counsel's office could attend your deposition?

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A That is my recollection, yes.
Q And I believe you testified that Ms. Kerner raised that subject?
A Yes.
Q You registered a strong objection?
A Yes.
Q Would you try again to recall whether anybody else registered an opinion on that subject?
A Oh, yes. Mr. Adair did, Mr. Switzer did and I believe Mr. Blight did.
Q Anybody from outside the RTC investigator general's office?
A Mr. Cottos may have expressed agreement with us, and ultimately Mr. Cesca acceded to our objections.
Q Acceded to them. That suggests that you perhaps convinced him?
A I believe so. I don't know that he came in convinced otherwise or if he was just listening to the discussion, but he was fairly quiet and we were fairly adamant and the decision was made that that would not happen.

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Q You testified earlier that in your view, having a third party sit in on an investigative interview would be completely contrary to your standard procedures?
A Absolutely. The only third party who would sit in would be if a witness was represented by counsel and requested their representative to be there.
Q And I believe you expressed essentially the same concern about the release of your deposition transcripts?
A That is correct.
Q Would you say, then, that your concern or your principal concern with respect to participation in the depositions -- or White House review of the deposition transcripts was to preserve the integrity of your investigative process?
A That was my principal concern, and certainly at the outset it was the overriding concern. When I became aware that the transcripts had been released to the White House on the 23rd, I was also concerned that those transcripts contained

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material concerning the subject matter of RTC's underlying criminal investigation.

Our whole investigation was occasioned by the fact that Treasury had released that material in the first place to the White House, and they had just done it again. I did not like being associated with that in any way, shape or form.

Q I believe you testified earlier that you considered the participation of the White House counsel to be, and I think I'm quoting you, "an inappropriate investigative technique"?

A Yes.

Q Again, it would be your view that participation of the White House counsel's office would somehow preclude you from conducting an effective investigation?

A It would potentially have an adverse impact, certainly. Any time you have a third party present in an investigation, it has that potential adverse impact. As an investigator, one wants to hold that data as closely as possible.

Q In the end, is it your view that the

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release of the transcripts to the White House counsel in any way impeded or interfered with the integrity of your investigation?

A The release on the 23rd, assuming that is when it occurred, did not substantively adversely impact our investigation. I believe it did call into question the integrity of our investigation. I believe that was questioned publicly because of that release. I do not think it substantively impacted. It looked terrible.

Q So in the end, the problem, in your estimation was one of appearance?

A One of appearance, one of violating our own procedures, one of appearing to give an undue preference to the White House. That was what we were investigating to begin with from our investigative standpoint. As I said, I remained concerned that substantive information concerning the RTC's underlying criminal investigation had been released. That was RTC's concern, and I shared it.

MR. O'CALLAGHAN: I'm sorry, just for clarification, you were also working under the

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assumption that the transcripts were released on the 23rd to the White House; is that correct?
THE WITNESS: That is correct. That was the premise of the question, as I understood it.
BY MR. PORTNOY:
Q With respect to your investigative techniques, your standard techniques, I believe you testified earlier that you generally do not take sworn depositions?
A Not generally -- it's too expensive -- but it is certainly not unprecedented. We have done it before, we have done it since. Subsequently an agent, or two agents, more often, conduct an interview which is frequently under oath. They write up the results of that interview in a report of investigative activity and that is the record of the interview. They also sometimes will write up witness statements and have the witness review it, correct it and sign it.
Q Why did you choose the more rigorous route this time of having deposition transcripts recorded?
A Two reasons: One, it's much faster, and

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two, we recognized that there would be extreme public scrutiny of this investigation and we wanted to let the witnesses present their testimony in their own words and not risk the possibility of an argument that we had not correctly represented a witness's statement because we had paraphrased it in ways that the witness might not like. Greater accuracy.
Q I believe you also testified earlier that your office has the authority to subpoena documents but not testimony?
A That is correct. And we don't have the authority to subpoena documents from federal agencies. An IG cannot serve a subpoena on another federal agency.
Q But you can subpoena individuals?
A We can subpoena individuals for individual records. We could not subpoena an individual for a federal record.
Q So, then, would it be fair to say that all of the individuals who appeared to have their deposition taken did so voluntarily?
A From our perspective, yes. They may have

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been told to come there by their employers, so it may not have been from their perspective, but from ours, yes. We had no authority to compel them.

Q Would it also be your view that all of the official records that were produced in connection with your investigation were produced, essentially, voluntarily?

A Except for the RT -- well, except for the RTC records as regards the RTC IG, we have absolute authority to get -- under the IG Act to have access to any agency records. They had no ability to refuse that.

From the Treasury's perspective, the Treasury IG had the authority to get records available to its agency. The Treasury IG may have some limits on that statutory authority. The IG Act treats the Treasury IG differently because of its situation. The Treasury IG, DOJ IG and DoD IGs are -- all have separate segments of the Act. I'm not quite sure how far their authority extends.

Q You indicated earlier that some of the witnesses may not have felt entirely like volunteers?

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A Yes.

Q That they may have been instructed by their superiors?

A That is possible.

Q During the course of your investigation, did you have an understanding as to the attitudes of the management of the Treasury Department and the RTC with respect to cooperation with your investigation?

A As far as I know, both groups of managers were cooperative in full.

Q So would it be fair to say that the alacrity with which the employees responded reflected their view of their superiors' wishes?

A That could well be.

Q You didn't get any indication that anybody in the hierarchy of either agency, or the White House for that matter, was trying to in any way dissuade people from cooperating?

A No, we did not.

Q You also indicated that during your meeting on the 5th of July, Ms. Kerner, I believe you used the word "obliquely" raised the issue of providing

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materials to the White House in light of White House cooperation with the investigation?
A Yes.
Q In your estimation, was Ms. Kerner suggesting a quid pro quo or an exchange?
A In my estimation, and to my recollection, it was more that she believed that they were cooperating fully with us and that we should do likewise with them.
Q Was her view colored by her belief that the White House counsel's office investigation was analogous to the inspector general's investigation?
A Well, that was the analogy that she put forward to me. I told her that I disagreed completely with that, that they weren't analogous to an IG and I said why, they're not statutorily independent, they're counsel to the White House, they represent the White House, very much contrary to being independent, they have certain fiduciary duties as attorneys.
Q I certainly understand that you didn't share Ms. Kerner's view, but did you have any reason

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to doubt the sincerity of her view?
A Her view made very little sense to me. I don't understand how it was held or how sincerely it was held.
Q But just to clarify for the record, Ms. Kerner wasn't suggesting a quid pro quo, was she?
MR. O'CALLAGHAN: As far as you know also.
THE WITNESS: There was no direct suggestion of that. As I said, it was an oblique reference.
BY MR. PORTNOY:
Q Did anyone at any time suggest a quid pro quo whereby the White House would make witnesses or materials available to you only if you provided materials in return?
A No, no one ever said that to me.
Q Did anyone ever say it to anyone?
A Not to my knowledge.
Q Did anyone from the White House ever say to you that you should make the materials available to them because they cooperated with you?

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A At the meeting on the 5th, the attorneys who were there from the White House said we want to cooperate fully with you and we are going to do that. Certainly the implicit suggestion was that they would appreciate like cooperation. There was no direct linkage. They're advocates. They were trying to get their position accepted.

MR. GIBSON: Pat, just for the record, your reference to the White House attorneys at that meeting is a reference to the meeting that was at 4:30 in the afternoon, not the earlier meeting?

THE WITNESS: That is correct. There were no White House counsel present in the earlier meeting.

MR. GIBSON: Thank you.

BY MR. PORTNOY:

Q Did the White House ever make available to you any of the materials collected during the course of the internal White House investigation?

A I'm not sure how far back that dated, that investigation. They made available to us materials that they had made available to the independent

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counsel and to the committees of Congress, which may well have been pulled together as part of Mr. Cutler's investigation, I don't know. I don't believe that we got documents on any investigatory work that was done in terms of their interviewing of their own witnesses, certainly subsequent to the beginning of our investigation. We got the one production and that was it.

Q So to be clear, you're not aware that anybody in your agency ever received White House interview notes, for example?

A Not that I am aware of.

Q Are you aware whether anybody at OGE ever received those notes?

A Not that I'm aware of.

Q Would it surprise you to learn that in fact Ms. Ley has testified that the White House did make those interview notes available to them?

MR. O'CALLAGHAN: Are you representing that that's what she testified to?

MR. PORTNOY: Yes, that's my representation of her testimony.

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MR. O'CALLAGHAN: That they were interviews taken by the White House counsel?

MR. PORTNOY: My question reflected my good faith understanding of the testimony.

MR. O'CALLAGHAN: Well, I just want to make it clear on the record what you're representing to Ms. Black before she answers the question.

BY MR. PORTNOY:

Q Because we don't have a transcript, although there may be one waiting in our offices at this point, let me rephrase the question.

Would it surprise you to learn that the White House made available to Ms. Ley materials pertaining to its internal investigation, other than those publicly produced?

A Well --

Q Or produced to the independent counsel --

A Those were essentially not public -- certainly not publicly produced. Other than those that were produced to us, I had no knowledge of that, if that occurred. This is the first time I've heard it.

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Q Assuming for the moment that Ms. Ley's -- that I have accurately represented Ms. Ley's testimony and that her testimony is in fact true, would you have considered it appropriate for the White House to share those materials with OGE?

A "Those materials" being the White House notes of interviews with its own employees?

Q Materials compiled during the White House investigation.

A I don't see anything wrong with it.

Q Did you ever discuss with anyone at OGE the subject of White House access to transcripts of your investigative depositions?

A At some point, yes.

Q During the course of your investigation?

A I believe I talked to Jane Ley after we found out that the transcripts had been given to the White House. I may well have talked to her about it beforehand, but I don't have a specific recollection. It wouldn't surprise me to find out I did.

Q Did Ms. Ley ever convey to you a view as to

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whether the White House should or should not have access to the depositions?

A I can't recall a specific discussion with her, so I can't recall a view, which isn't to say that she did not. I would consider OGE's view to be fairly peripheral.

Q Would it surprise you to know that Ms. Ley testified that she urged the White House counsel's office to obtain and review those depositions while your investigation was ongoing?

MR. O'CALLAGHAN: Mr. Portnoy, just so the record is clear, you need to be extremely careful how you are characterizing other witnesses' testimony. Make sure that you are very complete in how you characterize the testimony. Don't mischaracterize it. Make sure you give a complete description of how Ms. Ley testified. And I'm just -- I want it on the record that I don't think that's a fair and accurate description of what she testified to yesterday.

MR. PORTNOY: I believe it is a fair and accurate description, and I would restate my question.

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BY MR. PORTNOY:

Q Would you be surprised to know that Ms. Ley during the course of your investigation encouraged the White House counsel's office to obtain and review copies of the depositions of White House witnesses?

MR. O'CALLAGHAN: That's a different question.

THE WITNESS: I'm confused. Could you read back what his question was?

(The reporter read the record as requested.)

THE WITNESS: To obtain copies of the depositions of the White House witnesses. Prior to completion of our investigation?

BY MR. PORTNOY:

Q That's correct.

A I did not know that had occurred. I'm surprised to find out that it did, and I disagree with her. I disagree that that should be done.

MR. O'CALLAGHAN: Mr. Portnoy, also for clarification, I think you should identify whether Ms. Ley represented that she gave that advice with regard to redacted or unredacted transcripts or if

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she even made the distinction, so the question can be properly answered.

MR. PORTNOY: I believe the question has been properly answered, but if you would like to go into it on follow-up, I'm happy.

THE WITNESS: I would point out that the whole purpose of us doing this investigation is that OGE doesn't -- and if -- doesn't do investigations. And if she made such a recommendation, I would consider that reflective of that lack of experience.

BY MR. PORTNOY:

Q You testified earlier that you conveyed in the strongest terms to Ms. Sherburne your view that the White House should not have access to the deposition transcripts?

A That is correct. During the course of our deposition -- of our investigation.

Q I would like to refer you to a document which I know to be here.

MR. GIBSON: Off the record.

MR. PORTNOY: Sure.

(Discussion off the record.)

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BY MR. PORTNOY:

Q I would like the record to reflect that I'm showing Ms. Black a document Bates stamped number 0368, which I believe has a missing final digit. It is an E-mail dated Wednesday, August 3, 1994 from Ms. Black to Mr. Adair, Mr. Switzer and Mr. Blight. The subject is "transcripts, White House letter," and I would ask you, please, to refer to the third paragraph.

A Yes.

Q Would you read for the record, please, the first sentence of that paragraph.

A The first sentence of that paragraph says "I think that Sherburne had thought there was not a definitive refusal because, although I said the RTC IG would not agree to that, Kerner was more sympathetic to the problem that Cutler had."

That reference to a definitive refusal is a reference back to a statement where I quoted Sherburne above as saying in response to my statement that I had strongly objected to the provision of those transcripts, that she had not remembered such a

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definitive refusal.
Q I'm sorry, "she" being?
A Ms. Sherburne.
Q Does this E-mail accurately reflect your views at the time?
A Yes, it does.
Q So is it your view at the time that Ms. Sherburne believed that there had not been a definitive refusal to provide the transcripts?
A She told me that she -- I had stated that there had been a very strong objection to that and a flat-out refusal. Her response back was I didn't remember that definitive a refusal. I took that to mean she recognized there had been a refusal; perhaps she felt the matter was open to further discussion at a later time. She knew there had been a refusal. She just didn't remember it being, quote, that definitive, closed quote. And at the --
Q Would it be fair to say that she thought --
A That was what she was telling me.
Q -- that she told you that she understood that she had received a negative response but that

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she believed that the subject remained open for discussion?
A No, I would not go any further than what she said was I don't remember that definitive a refusal. I remember that phrase very distinctly and put it in the E-mail promptly after having the discussion with her. And I certainly give -- I expect that she told me that in good faith, I had no reason to believe otherwise.
And what I was conveying in this E-mail was that, if she thought that, it was because Ms. Kerner was more sympathetic than I was. She got a flat refusal from me, and there's no way it could have been understood otherwise, but she knew she was dealing with two IGs.
Q And at the time, you had no knowledge about any conversations she may or may not have had with Ms. Ley, did you?
A I did not.
Q And if, in fact, she was encouraged by Ms. Ley to obtain deposition transcripts, that might also have affected her view, might it not?

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A With all due respect, Ms. Ley didn't have authority to give up our documents.

MR. O'CALLAGHAN: Mr. Portnoy, I hate to interject again, but also I'm urging caution on characterization of other testimony, saying that she is -- I believe you said -- you might have said Ms. Ley might have urged her to get other transcripts and I'm not sure that that's her testimony.

MR. PORTNOY: I didn't actually said that. I said encouraged.

MR. O'CALLAGHAN: Encouraged is also -- I think you ought to be careful. I just want to make it clear that I'm not sure that's what happened. We don't have the transcripts back.

MR. PORTNOY: I am pleased to state for the record that I don't have the transcript and that I am not directly quoting Ms. Ley, but I would also state for the record that I'm endeavoring to accurately and fairly characterize her testimony. And I would advise you and ask you that, if you believe I've mischaracterized it, please correct it during the follow-up, but I'm really --

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MR. O'CALLAGHAN: No, I think it's important to correct it while you ask the question for a clear record.

BY MR. PORTNOY:

Q Going forward, if in fact Ms. Ley had had a conversation with Ms. Sherburne in which she stated her view that it was both appropriate and, in fact, desirable for the White House to obtain and review deposition transcripts of White House personnel, might that have contributed to Ms. Sherburne's view that there had not been a definitive refusal to grant the White House access?

A I can't speculate as to Ms. Sherburne's state of mind. I don't see how a subsequent statement by somebody else can undo the statement by the RTC IG's office. I would think only the RTC IG could do that.

Q So it was your view that only your office had the authority to determine what to do with the transcripts?

A It is my view that only our office could negate a prior refusal on behalf of our office. The

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investigation was being done by two IGs and custody of those transcripts was shared by those IGs and those IGs are both autonomous. The RTC inspector general has no control over the Treasury inspector general and vice versa.

I mean, we tried to work things out during this investigation, and we thought that we had done so. And it was our understanding from the beginning that Treasury -- the Treasury IG had accepted our position that these transcripts were not going to go outside of the investigative arena.

Q But just to clarify, it wasn't -- strike that.

Is it your testimony that only the RTC investigator general's office had the authority to release those transcripts?

A No, that is not my testimony. The investigation was joint. We in fact were initially asked to assist the Treasury IG. The Treasury IG asked -- and the Treasury Secretary asked us for that assistance because of RTC witnesses. In particular, to the extent that RTC witness transcripts were

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involved, I would think -- I would expect, I did expect that those were going nowhere without the authorization of the RTC IG.

That, in fact, was the expressed understanding with which we entered into this investigation. But if you're asking me, does technical legal authority to release, rightly or wrongly, such transcripts reside outside the RTC IG's office, I would have to answer that I could make no legal argument that the Treasury IG had that authority because of the nature of the joint investigation.

Q You conducted the investigation, at least indirectly, on behalf of the Office of Government Ethics, did you not?

A We were sending our report to them for their opinion, yes, but the Inspector General Act is very clear that the only one who has authority over an IG investigation is the IG, and not even the head of the agency can direct him as to that investigation during its course.

Q We're not discussing whether somebody could

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direct you. We're discussing --
A Or interfere with.
Q We're also not discussing whether anybody has the authority --
A Those are the terms used in the IG Act.
Q -- to impede your investigation.
But you became involved, as I understand it, at least indirectly, at the behest of the Office of Government Ethics because OGE lacked investigative authority?
A At least indirectly, yes. Directly, a request was made from Secretary Bentsen to acting CEO Ryan who made the request to us.
Q So in some measure, you were conducting your investigation on behalf of the Office of Government Ethics?
A I hesitate to use the term "on behalf of the Office of Government Ethics." We were conducting the investigation under the auspices of the IG Act and our own authority. We were certainly conducting it in close coordination with OGE and in order for them to be able to render an opinion. They were the

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end user of the product.
Q Right. The purpose of the investigation was to provide sufficient information for OGE to render an opinion to the Secretary of the Treasury; is that correct?
A The purpose of the investigation was to find out if any government rules, regulations and so forth had been violated. The entity which was going to render that opinion was the Office of Government Ethics. There is a distinction, or at least I view that as being a distinction.
Q In your view, when you conveyed deposition transcripts to the Office of Government Ethics, did those transcripts in any way become OGE records or OGE's materials?
A I did not view it as such, no. I viewed it as giving them access to our documents in order for them to do their job.
Q Do you know how OGE viewed it?
A No, I do not.
Q Referring your attention to the 28th of July --

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A Let me give you your document back.
Q Thank you.
I believe you testified that you were part of a meeting on that day in which the report was finally drafted or the finishing touches were put on the report?
A Yes.
Q I believe you testified that there was some discussion as to whether the deposition transcripts should be part of the report?
A There was such a discussion by Ms. Kulka, who was advocating that they not be; if not made a part of the report, at least they should not be released. I think probably making it a part of the report is a fair assessment of the position, and that was not the position of either the IGs or anyone on their staffs.
Q That wasn't your position, for example?
A No, it was not.
Q You were of the view that the depositions should be part of the report?
A Yes.

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Q And if you could just state again, please, why you were of that view?
A Again, I believe that letting the witnesses tell their story in their own words rather than attempting to write up reports of interviews was a valuable thing, and certainly at that -- we had been writing the report, drafting the report for some time with exactly that expectation.
Were we to change course at this point, the report certainly would have been extremely delayed in issuance, and I saw no value in doing that.
Q Did you also testify earlier, I believe, that the depositions were likely to become public in any event?
A Yes, I think that's when I used that horrible word, "FOIAble." The depositions would be subject to a FOIA request, and at that point, would have to be reviewed, redacted as to any information which need not be released under FOIA, or in the case of the Privacy Act, must not be released. And then released.
Q So at least with respect to the unredacted

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portions -- excuse me, the redacted portions of the deposition transcripts, they would have become public documents upon issuance of your report, irrespective of whether they were included?

A Well, not necessarily upon issuance, no. That would not necessarily be true. But the transcripts would become, upon completion of investigation, subject to a FOIA request. If you get a FOIA request during an investigation, it was rejected because the investigation is ongoing or documents are not released for that reason. It is not rejected. Documents are not released.

At the conclusion of the investigation, a member of the public or member -- including a member of the press obviously, could request all your documents in the investigation if they wanted to, and you would have to do a FOIA analysis on each and every page.

It was my view, and it is my view now, that that would include these depositions, and that we would have done an analysis at that point, and redacted certain things under FOIA and released the

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remainder.

Q Would the redaction under FOIA have been essentially the same as the redactions you made?

A I believe it would have been, yes.

Q Putting aside the administrative --

A I essentially created a FOIA-releasable document. That's what I did.

Q Putting aside the time involved in the administrative aspect of responding to a FOIA request, those documents would have been available under FOIA upon completion of the investigation?

A That is the first point at which they would have been available under FOIA. It would have taken some time under a typical FOIA approach for them to become public.

Q So irrespective of any release of depositions to anybody or the way in which your report was drafted, at least legally, those deposition transcripts would have been available to the public, as it turns out, on the 30th of July?

A No, I don't think so. If those had not been a part of that -- made a part of that report and

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deliberately -- you know, a public version deliberately being created, if instead we had simply released a report on the 30th of July, we could have started receiving requests for those documents. It would have taken some time to process that because they would have been in line with all other FOIA requests.

Q Right. I'm not suggesting that a requester would have gotten them on the 30th. I'm suggesting that a request would have been in order on the 30th and would have been processed.

A That is correct.

Q Last few. You testified earlier that, prior to the beginning of these depositions, a number of individuals from the RTC inspector general's office met to discuss the depositions?

A I don't recall testifying to that.

Q I'm sorry, I thought you testified that Mr. Gibson -- a meeting --

A I'm sorry. Wrong set of depositions. I was back last summer. Okay. Now we're focusing on today?

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Q Yes.

A And this deposition, yes.

Q We've come full circle.

A I misunderstood the question. Could you repeat it?

Q Did Mr. Gibson convene a meeting prior this round of Congressional depositions?

A We met and my recollection is that it was at Mr. Gibson's behest, last Friday.

Q What was the purpose of the meeting?

A We had, at that stage, just gotten formal notice that we were going to be deposed. Mr. Gibson wanted to talk to his witnesses before -- obviously we had very little time. We got the notice one business day ahead of the next business day on which the depositions were to begin. As a practical matter, the easiest way to do that was to gather us all in a room.

We also -- I think the various people involved in this investigation wanted to refresh our recollections as to what had gone on. 15 months had passed, 16, whatever.

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Q Were there conversations among the group of you as to what had occurred 15 months ago?
A Yes, some. We had a pile of documents which we looked at in attempting to refresh our recollections.
Q Would it be fair to say that you came away from this meeting with recollections that you didn't necessarily have before the meeting?
A I don't know that that's a fair statement. I went back and I reviewed documents, I think the appropriate term is "refreshing one's recollection." That does not mean it was not there.
Q I don't mean to suggest that you changed your view. I mean that you fleshed out your recollection, increased your recall of detail.
A "Refreshed my recollection" is the term I would use, and that's the term as a lawyer I'm comfortable with; more from documents than from anything else, quite frankly.
Q So in effect, this was a meeting with counsel to refresh your recollections in anticipation of testimony before Congress, at least in part?

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A At least in part, yes. We also went over the rules that you have in place for these depositions. Mr. Gibson explained when he could object, explained it was very different than civil depositions and in a judicial setting, cautioned people not to speculate; all of the things that you as an attorney have done in preparing witnesses for a deposition.
Q But then as a general proposition, you would agree that it's appropriate for counsel to meet with witnesses in anticipation of testifying before Congress and to prepare their witnesses by refreshing their recollection with documents and other materials?
A I would agree with that.
Q Last subject. I believe you have in front of you a document which is stamped Bates number 25252?
A Yes.
Q Would you describe it, please.
A It is a document entitled "chronology of events, White House briefing investigation, 1994."

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At the top there's a handwritten notation "2/2/95" and it is a brief chronology, one-page chronology of the events of 1994 between March 22 and July 29.

Q Did you prepare the document?

A Yes, I did.

Q Do you recall when?

A Yes, 2/2/95.

Q So that date refers to the --

A That's my handwriting, yes.

Q -- time of completion.

Where did you get the information from?

A I got the information from my calendar, the calendar of Mr. Switzer, the calendar of Mr. Adair and our recollections.

Q Why did you prepare this chronology?

A I prepared this prior to meeting with the Office of Independent Counsel so that I could -- again, this was a technique to refresh my own recollection as to events that they wanted to interview me about.

Q At the time you prepared it, did you share this document with anyone else?

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A Mr. Adair, Mr. Switzer had it. I believe I gave it to -- if not this date, shortly thereafter -- to Mr. Blight as well.

Q Did you use this document or discuss it during your meeting with Mr. Gibson prior to this deposition?

A I at least had it with me, yes.

Q Do you recall whether the document was used as the basis for any discussions during your meeting?

A I certainly referred to it myself.

Q Do you know if anybody else did?

A I'm trying to remember if anybody else did. Yes, I am told so. As a matter of fact, thinking back now, I think that Clark Blight did. I recall seeing him write on his.

Q Did anything occur at the meeting which would, in your mind, cause you to alter this chronology, looking at it now?

A Not any of the dates. Some -- I have on my copy of it crossed out on July 28 the name O'Rourke. One of the agents said that she didn't think he was there at that meeting. That was the only change.

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MR. PORTNOY: Thank you. That will conclude my questioning.

MR. O'CALLAGHAN: I have a couple quick follow-ups. I'm hoping I'm not going to take more than 10 minutes. Do you want to take a quick break, stand up, go to the bathroom?

THE WITNESS: Let's do that.

(Recess.)

EXAMINATION

BY MR. O'CALLAGHAN:

Q Ms. Black, I just have a couple of follow-up questions. Hopefully, I can be brief yet thorough.

Mr. Portnoy was asking you questions about whether you thought that the depositions should be part of the report, copies of the depositions, if it should be attached as exhibits, and you said yes; is that right?

A That's correct.

Q When you were referring to that, were you referring to the redacted or unredacted versions of the depositions?

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A When it came time to publicly release that report, absolutely redacted versions. As for the version of the report that we would issue to the Office of Government Ethics, I saw no problem with providing them unredacted transcripts.

Q Were you of the impression that the unredacted transcripts that you were providing to OGE were being provided to them with the agreement that it be kept confidential?

A That was my expectation, yes.

Q How long does it normally take for a FOIA request to be processed?

A It varies tremendously, depending upon the volume of documents you're requesting and how many requests are in the queue ahead of it. In our office at that time, given that this would have required coordination with the RTC office of general counsel, which it clearly would have, several weeks.

Q Now, as far as the deposition transcripts from this investigation, have the unredacted copies of the depositions been released to the public?

A Yes. Oh, I'm sorry, unredacted. No, no.

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Redacted copies.
Q Those are still confidential RTC documents; is that correct?
A The unredacted copies are still confidential, yes.
Q Only the redacted copies have been released?
A That is correct. When we provided the unredacted copies to the committee, we specifically noted that and asked that you also keep them confidential.
Q At the time that the unredacted transcripts were released to the White House, was there a possibility that the release of that unredacted information, confidential information, could have harmed the conduct of an active, open, RTC criminal investigation?
A I would view that as a possibility. You would have to ask the independent counsel.
Q Was that one of your concerns?
A Was that one of the concerns? Yes.
Q If the transcripts had been released to the

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White House before July 23, could that have had a negative impact on the investigation that you were conducting at the time?
A It could have, yes.
MR. PORTNOY: Just to be clear, do you mean other than the transmission of deposition transcripts to individual witnesses?
MR. O'CALLAGHAN: To witnesses, correct. I said to the White House, of all the --
THE WITNESS: Individual witnesses got their own transcripts pretty much as we were doing them, within 24 hours at the later ones.
BY MR. O'CALLAGHAN:
Q The question was the wholesale release of all the depositions unredacted to the White House.
A That was what I understood your question to be, and my answer was yes.
Q Thank you. You were asked earlier whether there's any evidence that you were unable to obtain before the end of the investigation that you thought was relevant to reaching a conclusion of the investigation?

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A Yes.
Q Do you recall whether there was a document requested by OGE regarding RTC delegation of authority policy?
A I have a vague recollection of that, yes. There was a question concerning delegations within RTC that OGE raised at the very end of the investigation. We tried to obtain that and we got one version, but I couldn't confirm that it was the one that was in effect during the time period.
And just with a time crunch, I never got the one that was applicable during -- that I could say with certainty was applicable during the important -- or the relevant time period. That was not a matter of refusal of a document. That was an issue of a relatively minor point in the investigation being raised by OGE very late in the process, and it was simply a time crunch. We didn't have time to get it.
Q So it was a timing problem, no time to satisfy that request by OGE?
A Correct. We tried. We just were not able

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to get the document.
Q I just wanted to make sure that we were clear.
A Yes. There was no refusal.
Q You had stated earlier that RTC IG wasn't given a specific time for when the investigation had to be completed?
A I don't recall anybody saying this investigation has to be done by July 23 or else.
Q Did you ever hear that Treasury IG was instructed that the investigation was supposed to be done by a certain time?
A They told us, the Treasury IG told us, that they -- that Secretary Bentsen wanted the investigation done before the hearings, a date was not cited as such.
MR. PORTNOY: Just to be clear, I think the question was were they instructed. I want the record to reflect clearly whether they were instructed or whether they perceived themselves to be under --
THE WITNESS: You would have to ask them that.

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BY MR. O'CALLAGHAN:
Q I just want to know if you had knowledge that they were told that.
A What they conveyed to us is that Secretary Bentsen wanted the report before the hearings.
Q When did the hearings begin?
A The House hearings, I believe began on July 26.
Q You received edits of the chronology that had been conducted by Treasury general counsel; is that correct?
A I'm sorry. I'm tired.
Q I understand. During the course of preparing the final chronology for OGE, did you receive copies of the chronology, draft chronology, that had edits and suggestions that were created by Treasury general counsel?
A I don't know if the edits were on a copy or if the edits, the suggested changes were a list of questions and suggested changes, or a combination of the two.
Q But you did receive suggestions from

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Treasury general counsel?
A Yes.
Q Those suggestions were presented to you at what time?
A I believe in the meetings of the 26th and the 28th both. That's my recollection. It is possible that it was -- I know we had and were dealing with it on the 28th, and I believe we also had something from them on the 26th, but I'm less clear about that.
Q And did you testify earlier that the suggestions didn't really have an effect on how the report was produced?
A What I said was that it tended to make the report longer, that where certain suggested changes were made -- certain changes were suggested to the way we had written something, we tended to simply go back to the document and quote it.
Q Did it change the tone of the document?
A No, I don't believe it did.
Q With it be fair to say, just being exposed to the suggestions by the Treasury IG, that that

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might have had an effect on people who were working on it and how the report was prepared?

A Not for RTC IG it wasn't.

Q I was just talking more of --

A I don't think that it had a lot of impact on the report, other than to make it longer.

Q Do you know whether, while Treasury IG had control of the diskette that was used for the draft chronology, whether Treasury general counsel made any contributions to the chronology while it was in their possession?

A I don't know.

Q Have you ever heard that?

A No.

Q When you said that some of the suggestions put the Treasury Department in a somewhat better light, do you recall what the suggestions were that did that?

MR. PORTNOY: I'm not sure that was exactly her testimony.

THE WITNESS: I said would have, I believe.

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BY MR. O'CALLAGHAN:

Q I said suggestions.

A Okay, okay. And I think I said general counsel's office, Treasury general counsel, you said Treasury as a whole. That was just my impression. No, I can't cite any specifics.

MR. O'CALLAGHAN: I have no further questions.

MR. GIBSON: If you don't, I have a question or two that I would like to ask to clarify.

MR. PORTNOY: Let me just say for the record, I have no further questions.

MR. O'CALLAGHAN: And I have no further questions.

MR. PORTNOY: We'll turn the microphone over to Mr. Gibson.

MR. GIBSON: Thank you. I just have a couple of questions, Pat.

EXAMINATION

BY MR. GIBSON:

Q During your testimony concerning our meeting last Friday, you stated that the group

reviewed "a pile of documents." Would you mind being more specific about what that pile of documents consisted of?

A That pile of documents consisted of our production to this committee.

Q Were any of the documents that were reviewed not produced to this committee previously?

A No.

MR. GIBSON: Thank you. I have no further questions.

MR. O'CALLAGHAN: Thank you very much. Off the record.

(Whereupon, at 6:23 p.m., the deposition was concluded.)

PATRICIA M. BLACK

CERTIFICATE OF NOTARY PUBLIC & REPORTER 310

I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Carmen Bunch

Notary Public in and for the
District of Columbia

My Commission Expires MARCH 14, 1998

OFFICE OF
INSPECTOR
GENERAL

RESOLUTION TRUST
CORPORATION

Counsel to the Inspector General

November 6, 1995

Alfonse M. D'Amato, Chairman
Special Committee to Investigate Whitewater Development
Corporation and Related Matters
534 Dirksen Office Building
Washington, D.C. 20510

Dear Chairman D'Amato:

On behalf of Patricia M. Black, enclosed is an errata sheet reflecting changes to the transcript of her deposition taken by the Staff of the Special Committee on October 12, 1995. Also enclosed is a letter from Ms. Black to the Special Committee updating and correcting certain responses provided during the course of her deposition, based upon information which came to her attention subsequent to the deposition. In light of the fact that hearings are scheduled to commence tomorrow, I have taken the liberty, by copy of this letter, of providing a copy of the errata sheet and Ms. Black's letter directly to Alice S. Fisher, Associate Special Counsel to the Special Committee, and to Neil E. Kravitz, Principal Deputy Democratic Special Counsel.

Please contact me on 703-908-7807 should the staff have any questions regarding the enclosure.

Yours very truly,

Fred W. Gibson, Jr.
Senior Attorney

cc: Patricia M. Black, Counsel to the Inspector General
Alice S. Fisher, Associate Special Counsel
Neil E. Kravitz, Principal Deputy Democratic Special Counsel

DEPONENT Patricia M. Black (October 12, 1995)
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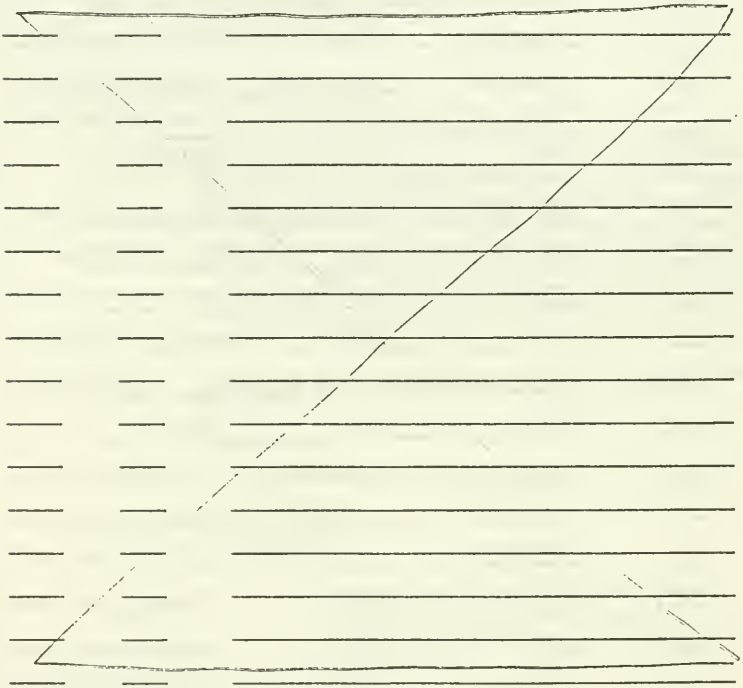
ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
11	13	Sarah	Sara	spelling
36	14	General Services Act	general supervision	transcript error
53	17	treasury of	Treasury said	transcription error
60	6	interview	interviewed	transcription error
60	6	delete "a" before "White"		transcription error
95	1	Lou	Lew	spelling
105	6	add "our" before "AIGI"		transcription error
110	10	add "assistant" before "inspector"		transcription er
119	2	angled	handled	transcription error
130	2	Ken	Gene	transcription error
136	2	"we've been going"	"we should go"	transcription er
147	6	Sarah	Sara	spelling
148	15	references	referencing	transcription error
160	7	reference	referencing	transcription error
190	8	important	unimportant	transcription error
192	6	ABA	APA	transcription error
195	17	the	this	transcription error
246	18	legally	Legal	transcription error

DEPONENT Patricia M. Black (October 12, 1995)

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
250	1	he name	named	transcription error
286	9	no	a	transcription error



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Counsel to the Inspector General

November 6, 1995

Alfonse M. D'Amato, Chairman
Special Committee to Investigate Whitewater Development
Corporation and Related Matters
534 Dirksen Office Building
Washington, D.C. 20510

Dear Chairman D'Amato:

I wish to correct two items in the sworn deposition I gave to the staff of the Special Committee on October 12, 1995. First, in response to Mr. Chertoff's question "Can you tell us whether this series of conversations with Ms. Kerner occurred during June?" I said "Yes, I believe they did." Upon further reflection, I wish to revise my response to read: "Yes, in June and late May." This statement is found on page 26, line 11.

Second, I indicated that on July 28 Ellen Kulka attended a meeting in Rosslyn with two or three attorneys. In fact, I have since learned that only one attorney, William Collishaw, attended that meeting with Ms. Kulka. The other three attorneys arrived in Rosslyn later that day, but did not attend the meeting with Ms. Kulka. The statements to be corrected are: page 147, lines 18-20, should be revised to read "...had an RTC attorney, William Collishaw, with her. Three other attorneys, Orr, Binkley and Carter arrived later to review the transcripts and propose redactions, but did not attend the meeting."; and page 160, lines 18-21 should be revised to read "...want to propose redactions then. Ms. Kulka arranged for three attorneys, Binkley, Carter and Orr to come to our offices to review the transcripts. At that time we said we will put the transcripts in a..."

If you have any questions about these revisions, please contact me on 703-908-7802.

Sincerely,

Patricia M. Black
Counsel to the Inspector General

1735 N. Lynn Street • Rosslyn, VA 22209

DEPOSITION OF DOUGLAS N. FRAZIER
IN RE: S. RES. 120

THURSDAY, OCTOBER 12, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of DOUGLAS N. FRAZIER, called for examination pursuant to notice of deposition, at 9:50 a.m. in Room 640–A of the Hart Senate Office Building before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, JR., ESQ.
Majority Deputy Special Counsel
NEAL E. KRAVITZ, ESQ.
Minority Principal Deputy Special Counsel
GLENN F. IVEY, ESQ.
Minority Counsel
ANDREW M. SCHAUER, ESQ.
Minority Assistant Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CHARLES J. SGRO, ESQ.
Counsel to the Deputy Attorney General
U.S. Department of Justice
10th Street and Constitution Avenue, NW
Washington, DC
On behalf of the Deponent.

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Witness	Examination
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EXHIBITS

Douglas N. Frazier

Deposition Number	Identified
Frazier Exhibit 1	3, 641
DOJ Exhibit 017456	11, 682
DOJ Exhibit 007049	13, 683
DOJ Exhibit 001484	15, 685
DOJ Exhibit 007039	17, 686
DOJ Exhibit 007041	36, 687
DOJ Exhibit 007157	42, 692
DOJ Exhibit 006675	43, 693
DOJ Exhibits 006586, 006587 and 006588	45, 694
DOJ Exhibit 006671	47, 697
DOJ Exhibit 017458	78, 699
DOJ Exhibit 006692	79, 701
DOJ Exhibit 006675	128, 702
DOJ Exhibits 006688 and 006689	140, 710
DOJ Exhibit 006686	141, 739

PROCEEDINGS

(Frazier Exhibit 1 identified.)

Whereupon,

DOUGLAS N. FRAZIER

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Mr. Frazier, could you please state your name for the record.

A Douglas N. Frazier, F-r-a-z-i-e-r.

Q Your present business address.

A 2000 Main Street, Suite 602, Fort Myers, Florida 33901, and that is the United States Attorney's Office for the Middle District of Florida. That's where my offices are.

Q What is your phone number there?

A It is 941-337-3179.

Q And what is your present position?

A I am the assistant director for evaluation and review with the Executive Office for United States Attorneys, Department of Justice.

Q And how long have you been in that position?

A About 15 months, June of '94.

Q To the present?

A Yes, to the present.

Q And prior to that, what was your position? Well, actually, from September 1992 until June of '94, what was your position?

A From September of '92 until June of '93, I was acting Associate Deputy Attorney General. And from June of '93 to December of '93, I was interim United States Attorney for the Middle District of Florida.

Q What dates were those again?

A From September of '92 to June of '93 in the Deputy Attorney General's office. From June of '93 until December of '93, U.S. Attorney in middle Florida.

Q Now, are you aware of the committee's

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document request to the Department of Justice dated August 25, 1995?

THE WITNESS: Is that the one you called me about?

MR. SGRO: Yes.

THE WITNESS: Yes.

BY MR. GICALE:

Q Did you search for responsive documents, notes, reports, memoranda with respect to that request?

A Yes.

Q Have all the responsive documents been produced?

A Yes.

Q Did you speak to anyone other than counsel here prior to your deposition with respect to your testimony here today?

A No, not with respect to it, no.

Q Counsel for the minority has pointed out that what I didn't ask you about was your position between December 1993 and June 1994. What were you doing at the Department of Justice during that time

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period?

A I was detailed to various tasks, some of which included doing some Office of Professional Responsibility investigations, and I also performed some responsibilities as a senior litigation counsel within the Executive Office for U.S. Attorneys.

MR. GICALE: Today's deposition is conducted pursuant to Senate Resolution 120. The resolution establishes a special committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority and other related matters.

Section 1(b)2(c) of Senate Resolution 120 authorizes investigation and public hearings into whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation.

This will be the focus of today's

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deposition. You were requested to testify on October 5, 1995. We are taking this deposition in advance of the public hearing that may occur in late October or November. It is possible you may testify.

We will be asking you a series of questions. If you don't understand the questions, let us know and we will rephrase them.

The stenographer will prepare a record of questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings.

Prior to the hearings, you will receive a letter from the committee telling you that you may come to the Senate to review the transcript of your deposition and make note of any corrections for transcription on the errata sheet. If you are called to testify at public hearing, you will be permitted to have a copy of your deposition transcript four days in advance of your testimony.

You may be represented by counsel. There may be objections to the form of questions which will be noted for the record. Counsel may object on

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grounds of privilege or relevance, and the committee chairman may rule on objections where the witness refuses to answer a question.

We have everybody's appearances noted at this point?

MR. SGRO: I believe so.

BY MR. GICALE:

Q Now, we have marked as a Deposition Exhibit Number 1, and I show you, Mr. Frazier, a document which purports to be a transcript from the Committee on Banking and Financial Services from the U.S. House of Representatives. It is dated Monday, September 18, 1995, Washington, D.C., and it is a deposition that was held, your deposition held in room 714 of the O'Neill House Office Building on that date with respect to the matter of Madison Guaranty Savings & Loan.

I'm going to show you this deposition exhibit marked as Number 1 for this deposition. Have you had an opportunity to review this deposition subsequent to giving this testimony before the House?

A I received a facsimile copy of this

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yesterday right before I got on an airplane to come to Washington. I have gone through it quickly. I have not gone through it in any great detail. But it appears to be in substance accurate. I have not -- I have noted a couple of typographical errors, but I haven't read it really closely.

Q With respect to the substance, does it truly and accurately reflect the substance of your testimony before the House?

A Yes, I believe it to be.

Q Now, we have talked to your attorney about this, and you will be reviewing it once again and submitting an errata sheet to the House, and it is my understanding you will also be submitting a copy of that to us.

MR. SGRO: Which will become part of the record.

MR. GICALE: And we will subsequently mark that as Exhibit Number 2.

MR. SGRO: Just a point of clarification. You referred to me as Mr. Frazier's attorney. I am really here representing the Department of Justice.

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BY MR. GICALE:

Q In your testimony --

MR. SGRO: Off the record.

(Discussion off the record.)

BY MR. GICALE:

Q Mr. Frazier, in your deposition before the House, you answered a number of questions with respect to your involvement with respect to these criminal referrals, a particular criminal referral from the RTC that the Department of Justice received in September and October of 1992.

You also testified to the fact that in late December of 1992, you had some discussions about the status of that matter because the U.S. Attorney at that point in time had indicated some desire to be recused from the issue; is that correct?

A My recollection is that -- first of all, I didn't really handle the referral. The referral and recusal are two separate things, although the referral became part of the recusal package.

The referral would have been something that was handled by the criminal division or the special

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counsel for financial institution fraud, not in the deputy's office. The deputy's office handled the issue of recusals.

At some time during the fall and winter of '92, I had conversations with Tony Moscato and Deborah Westbrook, Tony being the director of the Executive Office for U.S. Attorneys at the time and Deborah Westbrook being legal counsel, in regard to communications that they had had with the U.S. Attorney in Little Rock, Arkansas at the time, Charles Banks, Chuck Banks, and the issue of an investigation involving Madison Savings and Loan and the potential that then President-elect Clinton and his wife might be witnesses or some involvement.

Those conversations resulted in the generation of a request for recusal that would come from the Executive Office for U.S. Attorneys to the Deputy Attorney General's office for decision, because the Deputy Attorney General was the decisionmaker on issues of recusal involving United States Attorneys offices.

(DOJ Exhibit 017456 identified.)

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BY MR. GICALE:

Q Showing you what is marked as Bates number 017456, is that the request for recusal that you are referring to that came from the Executive Office of U.S. Attorneys?

MR. KRAVITZ: What was the number on that?

MR. GICALE: 017456.

(Witness examined the document.)

THE WITNESS: Yes, it appears to be.

BY MR. GICALE:

Q That's referred to as a control sheet in the executive office?

A It is what we refer to as Exec Sec control sheet. This isn't is the control sheet. This is the history data sheet.

Q That refers to how that data was referred on to your office at the time?

A Yes. This normally would be the cover to the communications between the department within sections telling from whence it came and to whom it should go and who was responsible for it and what was to be done and then established dates, due dates.

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(DOJ Exhibit 007049 identified.)
BY MR. GICALE:
Q Attached to that was a letter, I believe, from -- and I'm going to show you what is marked for identification as Bates number 007049. That would be a letter dated January 7, 1993 to Donna Henneman from Charles Banks wherein he states his position with respect to this particular referral.
A I have seen this letter before.
Q That would have been the letter that would have been attached to this --
A I believe it to be.
Q -- to this control sheet in supporting the request for recusal?
A It is in the right time frame, so I'm pretty sure that this is the one. The information in there was certainly the information that was involved in the recusal package.
Q Now, in the last paragraph of that letter, Mr. Banks asks -- indicates that it seems prudent that a limited preliminary investigation of allegations pertinent to Mr. and Mrs. McDougal and

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Ms. Anspaugh should be considered; correct? That is the last paragraph of the first page?
A Yes.
Q Furthermore, he states the taking of 302s from these individuals should determine whether there is merit to substantiate further investigation.
A Yes.
Q Anywhere in that letter or in that correspondence is there any request to give advice as to whether -- for the department to give advice to him as to whether or not to proceed with an investigation?
A He basically is notifying the department of the date that he is going to resign and he is making a recommendation and he also says that he believes he has a conflict of interest.
Q So, based on that letter and that request from the Executive Office for U.S. Attorneys, what is your recollection of what you did once you received these documents?
A I think that this letter was generated as a result of conversations that I had with Deborah

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Westbrook that resulted from conversations she had with Mr. Banks over this whole issue. I recall suggesting to her that what should be done is he should submit a recusal request. This letter came in and it wasn't really a recusal request in the sense of others that we had had that were more clear. But I told her that we should still treat it as a request for a recusal.

As a result of that, I prepared a recusal package. The Deputy Attorney General is the decisionmaker on issues of recusal. By the time we got this, Mr. Gersen was the acting Attorney General, the acting Deputy Attorney General and the acting Assistant Attorney General, civil and the acting Associate Attorney General. Consequently, the decision had to go to him to be made. He would be the decisionmaker.

So, we prepared a package. That package, as would be done on any criminal case, was sent to the criminal division for their recommendations.

(DOJ Exhibit 001484 identified.)

BY MR. GICALE:

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Q I'm going to show you what is marked for identification as Bates number 001484. Would that be your memorandum to John Keeney requesting the criminal division review this recusal package?

A Yes.

Q That document, 001484, was dated February 18, 1993. In the normal course of events, how long would it take -- what was it your experience -- excuse me. Let me rephrase that.

How long would it take to get a response from Mr. Keeney?

A Who knows? We really hadn't done any of these. The change in the procedure came about subsequent to my coming to the deputy's office in September of '92, to make the Deputy Attorney General the decisionmaker on issues of recusal involving U.S. Attorneys offices. We really hadn't done many.

Depending on the issues, it shouldn't take particularly long, but things in the Department of Justice move at their own pace sometimes. Depending on the complexity of the issue, it could be anywhere from a matter of hours to days.

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Q What were you looking for from Mr. Keeney?
A I was expecting Mr. Keeney to respond that we agree that a recusal is in order and we recommend that some section of the criminal division handle this investigation.
Q Were you looking for any legal analysis of the investigation?
A No. This was purely an issue of recusal and the criminal division's role would be to recommend to either agree or disagree with the recusal request and who should be the appropriate person or persons to handle the investigation if the U.S. Attorney is recused.
Q Now, when is the next time -- at some point in time you later learned that Mr. Keeney did indeed respond to your memo, and I'm going to show you what's marked for identification as Bates number 07039 -- I'm sorry. 007039.
(DOJ Exhibit 007039 identified.)
BY MR. GICALE:
Q That is a memorandum from John C. Keeney to Douglas N. Frazier, date stamped March 19, 1993.

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A Right.
Q Now, at what point in time did you receive this memo?
A My recollection is that I saw this sometime in the end of May of '93. The reason I say that is because from the time that I sent in February through Mr. Keeney to Mr. Gersen the recusal package until sometime late in May, I continued to have conversations on a relatively frequent basis with the executive office and they asked continually where was the recusal package, had the decision been made. I would tell them I don't know, I haven't seen it, I haven't heard.
By then, after the inauguration, my responsibility basically was to come and sit in the deputy's office and look at the Exec Sec control sheets. I had no responsibilities and had no authority. So, I basically took paper from one place and moved it to another. There wasn't very much paperwork that came into the deputy's office subsequent to the inauguration.
For the most part what I did was attempt to

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assist Mr. Moscato, who had not ever been in the United States Attorney's office and had not been in the Executive Office for U.S. Attorneys at any time before he became director. I attempted to assist him in just the day-to-day operations of the executive office since I had served in the executive office in several capacities. I sort of consulted with him on a daily basis.

Q When you say there were continuous requests from the executive office as to an update or decision on this, would that have been throughout February, March, April, May?

A Well, at least through March and April and May.

Q It didn't just start in May when they received some of the phone calls?

A No. I had conversations with Deborah Westbrook and also I believe with Donna Henneman, and they would ask have you seen or heard, and I would say no, I haven't, I have no responsibilities, they have given me no authority. I sent the package, and I don't know where it is.

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Q These would be verbal communications, not subsequent memos to you?

A Right. They would be verbal. I would be down there two or three times a day and would sometimes see people in the hallways and we would have that conversation with some degree of frequency. It was an open action for them. I knew they were waiting for it.

Q Can you briefly describe -- you have described what your duties were at that point in time, but how was correspondence coming into that office, starting in late January, February, March until Philip Heymann came in as the deputy? How would correspondence come into that office before it got to your desk?

A Very little correspondence came in. Things would come via the Exec Sec, Executive Secretariat. Right after the inauguration, we got nothing. I became concerned that there were a number of ongoing things within the department that the new administration would not have knowledge of, and so I requested to continue to receive the Executive

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Secretariat summaries that came out every day. They basically were a synopsis of those cover sheets like the exhibit that you showed me.

They would just basically say from and to and a little blurb about what the subject of the correspondence was.

The reason I did that -- and one prime example is that on one occasion I noticed that there was a letter requesting an appointment with the Attorney General, and I noticed from whom it came, and I sent a memo up to the Attorney General's office telling them that that person was under investigation by a district where I had served and also by the criminal division, and it would be nice for the Attorney General to know that before she met with those people, those kinds of things that no one would know if they hadn't been involved prior to. The names wouldn't have been familiar. So anything I saw that I had some knowledge of I would do.

Also for the most part, most of the correspondence I got was because of necessity. I had all of the clearances to see classified information.

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So for a period of time until I think it was John Regovin became the person that handled that, for a period of time I was the one that got classified information from NSC and those kinds of things. Then I would route it to where I thought was the appropriate place. That was because I was on all the security lists as the person that had the clearances.

Q These Executive Secretariat summaries, would you get them on a daily basis?

A Yes.

Q It would be a compilation of all of the outstanding Exec Sec matters?

A It would be the day's. It would be a summary of the day's correspondence that was being tracked as of that date. Then on occasion you would get what they called the overdues, which showed things that were overdue correspondence.

Q For example, if you received, had received a memorandum from John Keeney to Doug Frazier, and the specific example is the March 19, 1993 memorandum, would it have been on that sheet?

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A Yes.
Q For March -- for the day it was received from that office?
A Yes. If it was controlled, it would be on there.
Q Now, how long were you reviewing those Exec Sec summaries?
A I did that until Mr. Heymann showed up.
Q So, throughout January, February, March?
A February, March and I can't remember exactly when Mr. Heymann showed up. He came -- he was in the offices for a period of time while he was being vetted in preparation for his confirmation hearings. But he wasn't performing any responsibilities as the deputy.

But he had lots and lots of personal correspondence that came in, letters from colleagues congratulating him on being nominated, people wanting jobs. There was truckloads of correspondence that began to arrive once he got there. But I didn't review those things anymore. He had other people that he brought aboard that did that.

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Q What about in March when this memo --
A Yes. I would have seen the Exec Sec summaries every day during that time when I was in Washington.
Q And this memorandum did not come up, this March 19, 1993 memorandum did not come up in those summaries?
A No. I have been over this, and I do not recall ever seeing that memorandum until Deborah -- my perception was that the recusal package went to the criminal division and either had not emerged from the criminal division or had gone on to the Attorney General or the Deputy Attorney General's office or whoever was acting.

I was surprised to find out from Ms. Westbrook at some juncture in the spring that they had in fact passed this package on. I asked her to see if she could find what it was that they submitted and put the package back together so that we could get a decision, because now we had a Deputy Attorney General aboard.
Q So, in fact the package you eventually

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acted on was --
A It was a reconstruction, I believe, that Ms. Westbrook put together, her office put together and sent up. That's -- my memory is that's what happened.
Q Do you know whether she received, for instance, the copy of the memo from John Keeney to you?
A No. She was aware of it for some reason. I suspect -- I don't want to speculate. She had a copy, knew about it and put the package together and sent it up. I was surprised to see my name on there, and I was surprised to see the date.
Q Now, in late January and February, Stuart Gersen as you indicated was the acting Attorney General?
A Yes.
Q And several other titles. Was there anyone else assisting him in running the department from the new administration?
A There were several folks.
Q Who were they?

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A Mr. Hubbell was there and there was also another -- gosh, I cannot remember his name. There was another attorney who was there for a while who came over from the White House and then went back to the White House and then I think I read in the paper he returned to private practice, who assisted in transition, and I cannot recall his name.
But those were the two original people that came into the department right after the inauguration that were believed to be in charge. I was not up on the floor where the discussions were being had and didn't talk to any of these people. But those were the two people that were perceived to be the caretakers with Mr. Gersen.
Q Would those people have had access to memos like this one dated March 19, 1993?
A I don't know.
Q How would a memo like this come into that office? There is obviously secretaries or clerks in that office at that time.
MR. SGRO: When you say "that office" --
BY MR. GICALE:

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Q Your office in March of '93.
A Well, nothing was coming in -- by March, nothing was coming in to the Deputy Attorney General's office except those exec summaries. The department's position was that there was no Deputy Attorney General.
Q So, things designated for the Deputy Attorney General were being routed elsewhere?
A I assume. I can't say for sure, but that's why I sent the memo through Mr. Keeney to Mr. Gersen. He was the acting Deputy Attorney General when we generated the recusal request. He stayed much longer than I think was everybody's intention. He stayed until Ms. Reno came aboard. I believe that was late February or maybe even the first part of March because I remember we had some unsuccessful bids to be Attorney General.
Q By March 19, 1993, Ms. Reno was in office, but you still --
A I believe that she came aboard on the 17th or right about the 17th of March. The date -- she had been there a very short while, and Mr. Gersen was

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now gone.
Q Even assuming there was a clerk or a secretary in your office, they weren't receiving anything to handle?
A No, because it would go to the Exec Sec, and they were doing something with mail that was addressed to the Deputy Attorney General. I don't know what they were doing with it. I had the perception, and this is just a perception, that they had someplace where they were just stacking the stuff up. I say that because once Mr. Heymann got there, all of a sudden we had boxes of correspondence.
Q That was backdated?
A Yes. I don't recall a specific piece in looking at it and going my, this has been sitting for a while. That was my perception as we began to handle issues that these were waiting for a Deputy Attorney General to come aboard. They just didn't get handled by the one person who was in charge. There was too much to do to get them all done.
Q Who was in charge of Executive Secretariat at that point?

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A I don't recall. The Executive Secretariat works under the auspices of the Justice Administration Division and the Assistant Attorney General was Steve Colgate and still is. I know that the Exec Sec office believed that we were not in business, because I said what happened to everything and they said you are not the deputy -- there is no Deputy Attorney General, everything is being routed to Mr. Gersen.

I do recall that I prevailed upon them to send me the summaries because I believed it would be helpful to the new administration if someone was looking at them and could give them an idea of something that might be troubling or that sort of thing.

I would see things and I would call the criminal division and say this is something. I would call Mr. Keeney and say this is something you ought to look at, are you aware of it. Most of it he would say he was aware of it; if not, most of it was national security things, I would call Mark Richardson who handled things in the criminal

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division to make sure he was involved.

Q Exec Sec did say to you when you questioned them about it they said everything was being routed to Mr. Gersen?

A I never talked to them. The secretaries, I asked them where are things and they said we have talked to Exec Sec and everything is going elsewhere and that was sufficient.

Q You said Mr. Gersen and elsewhere. Did they say both?

A I don't recall. My perception was that it was going to Mr. Gersen. He was everything. So, unless the -- unless it was the criminal division's responsibility, he basically had all of the hats in the department above the Assistant Attorney General.

Q There came a point before he left in March and Ms. Reno came aboard --

A Yes.

Q -- and you still did not continue to receive mail into that office; correct?

A Right.

Q And did you inquire then as to where it was

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going after that change?
A I talked to Mr. Gersen and then to his assistant early on and basically said I have been doing these things, and I gave him a litany. I view them as mostly ministerial. They are not policy. They are not hard decisions. They are just things that have to be decided by someone at the deputy's level. I said I will continue to do them if you want.
Mr. Gersen sort of made it plain and clear that he wasn't interested in any assistance, and so --
Q Who was his assistant at that point?
A That's another one I cannot remember. It was someone who worked for him in the civil division. I cannot recall the name. I have been asked and I can't recall. I know because I had a conversation about this recusal package, just a brief one, as I think we ought to send it this way, do you agree, and they agreed. I did what we would normally do, send it through the criminal division to them.
Q In your efforts to reconstruct this, what

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happened to this package, who did you talk to about it to see?
A Only to Ms. Westbrook and to probably Mr. Moscato. Once she said she had something from the criminal division, now Mr. Heymann was aboard, David Margolis had come up from the criminal division and was an Associate Deputy Attorney General, acting. There was an office to handle this. It hadn't been resolved. I believed it to have been lost or not acted upon. So we resurrected it to get a decision.
Q In any event, you didn't subsequently discover it in this pile of papers that suddenly came into the office when Heymann came in, did you?
A I don't believe so. It is possible. I have a memory of seeing something twice, but I probably just assumed that what I saw was the package that Ms. Westbrook said she was sending up. It was so close in time. I know I didn't look closely at the routing and all of that sort of thing.
I looked just at the package and then made some recommendations to Mr. Margolis and we drafted a

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memo back to the district. That was in May, late May first part of June of '93.

Q You testified before the House -- let me withdraw that question.

Just to stay on this topic a little more, you and Mr. Margolis discussed this matter and a memo was sent out to the district in May or June of 1993; is that correct?

A And I'm pretty sure it is June, yes. I'm pretty sure it is June. The thing that came in, I wrote a little note to Margolis and basically said, probably put his name and my initials. He looked at it, sent me a note back saying let's talk about this. I walked across the hall and he said have you read it? I said yes. He said what do you think? I said well, if there is no case to be had, then there is no need for a recusal. He said I agree.

So we drafted a memo that said the criminal division says that there is not a case; therefore, we don't see the need to act on a recusal. If you decide that -- I'm paraphrasing this. If you believe that you have new information or more information,

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then we can revisit this issue. We left an out, an avenue for them, they being the district, if they believed or disagreed with the criminal division's decision.

There is something about this now. Once again, I guess I have learned a good lesson. I made an assumption that I now know to be inaccurate, that the criminal division had consulted with the district on this issue.

When I read the package, it seemed to me that they must have talked. It didn't occur to me that anyone would take the referral and do a declination based just on a referral package without talking to the district or doing something more than just looking at the referral sheets that came in from RTC or whoever it was.

I was under the impression there had been some communication with the district, and I know that to be erroneous. As Mr. Margolis pointed out to me, it said in the memo from the criminal division that they had based it solely on those papers.

But I still felt that they must have

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talked. I know Mr. Margolis and I talked about this. I get the impression they must have talked to the district.

Q How did you subsequently learn that they had not talked?

A I think that I knew for sure when I had a conversation with Mike Johnson, who is the first assistant in Little Rock, who was SLC then, and I asked him --

Q What is SLC?

A Senior litigation counsel. At the time this was going on, when the new U.S. Attorney came in in the late summer, fall of '93, long after I was gone to Florida, he became first assistant. I know Michael from being an assistant U.S. Attorney and conferences and that sort of thing.

I asked him because to this day I have not seen the memo back to the district that I'm pretty sure Mr. Margolis signed. I have not seen a copy of it again. I asked him had he ever seen that. He said yes, and then he began to tell me that nobody in the district apparently knew anything about this case

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outside of Mr. Banks and another person and that there were no communications with the criminal division that he knew of.

So, putting two and two together, it seems there was no communication. Actually, the memo from the criminal division says based solely on the referral package.

Q Going back to your initial request, did you ever ask them, the criminal division, to make a determination as to whether or not an investigation should go further on this matter?

A No. That was not anything I contemplated in referring this to them. It was purely do you think the recusal is in order and if so, who should get the case.

(DOJ Exhibit 007041 identified.)

Q Instead, what you received eventually you saw a copy of, in addition to what is marked for identification as 007039, the memo from Keeney to Frazier dated March 19, was a memorandum, Bates numbers 007041, a memorandum dated February 23, 1993 from Mark J. MacDougall to Gerald McDowell.

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A I believe this to be. I have never seen this on long paper like this. This appears to be the memorandum that was in the package that came into the office, the one that I believe was put back together by Ms. Westbrook.

Q Based on your experience as a career assistant U.S. Attorney, in addition to this criminal attorney not talking to the people in the district, the assistants in the district about the case, were there any other things about it, about the review?

A See, that's another reason that I thought the memo -- that memo is another reason I thought there must have been communication because that memo is not responsive to the issue of recusal. It is a declination.

Normally a declination, it has been my experience -- and this is not always that way, I'm sure, but in my experience, normally a district is looking for some support to a declination. A declination can be very unpopular, especially if it has to do with any sort of a politically tainted case.

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So, if a district felt that there really wasn't sufficient information to warrant an investigation, they would probably communicate with the appropriate section in the Department of Justice and say do you agree, and if the criminal division then agreed, then the U.S. Attorney would feel more confident in his or her position on the investigation.

So, I just assumed that that's what this was, that the district felt that there wasn't enough and the criminal division was backing them up.

As I said, I did not pay that much attention to the scope of the review. I looked -- you are dealing with scads of paperwork every day, hundreds of documents for decision are to be routed. The first place I look at a document has "from," "to" and then I look at the back to see if there is a recommendation. If there is a recommendation, then I acted accordingly.

This one had a recommendation, and I remember seeing the date. They don't think there is a date, there is no need for recusal. It is moot. I

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didn't read that document in any great detail until this year. This is the first time that I really looked at it closely.

Q Did you note the fact that they did not review the 300-some exhibits that were submitted by the RTC with respect to this referral?

A No, I did not, not until -- I wouldn't have known how many exhibits were submitted. I didn't know that they relied only on the things that are in the scope of review until I read it earlier this year when someone showed it to me.

MR. GICALE: Off the record.

(Discussion off the record.)

BY MR. GICALE:

Q Going back to Executive Secretariat, is there a way of determining -- going back to them -- that you are aware of to determine how they routed things like perhaps this memo of March 19th from Keeney? Is there a way in the department to do that?

A Sure. It is computerized. They can do a search. My understanding has been that they have searched and cannot find that that document was

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controlled out of the criminal division. I don't have any personal knowledge of that. I asked the question, and that's what I was told.

Q And you certainly can't tell, I take it, from looking at the document Bates number 017456?

A No, because this should have gone from me to Keeney to the acting AG for signature. That's how it should have gone. It shouldn't have come back necessarily to me. Had it come back, I would have sent it on.

Q Again, I'm --

A My concern -- not a concern. I was surprised and I just felt this was two ships passing in the night. We sent down a recusal. They were doing a referral and because the two had some interconnection, they decided to send this memo to us. And basically, my judgment would have been that if there is no case, then there is no need for recusal. It is moot.

Q The memorandum from Keeney to you dated March 19, 1993 had copies going to a number of sections and a number of individuals at Justice in

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the lower left-hand column; correct?
A Yes.
Q And listed there are records, a section "chron." Are you familiar with that section?
A No.
Q Executive Secretariat, Keeney, Erganson. What was his title at the time?
A I think Mr. Erganson was a Deputy Assistant Attorney General in the criminal division then.
Q McDowell was --
A Chief of the fraud section in the criminal division.
Q A copy went to him, or according to this document.
A It was generated through him, the attachment.
Q The attachment was.
A And then Allen Carver, who was the acting special counsel for financial institution fraud.
Q The last name there or it seems to indicate branch --
A I have no idea who that is.

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Q Do you have any knowledge of whether or not these people received or kept copies of this memorandum?
A I would not know.
Q And did you ever talk to them subsequently about what happened to this memorandum?
A I have not talked to any of those people about what may have happened to the memorandum. I have seen Mr. McDowell once. I haven't seen Mr. Carver. I haven't seen Mr. Erganson since all this came to a head. I don't believe I have talked to Mr. Keeney -- I know I have not talked to him about it.
Q Have you talked to anybody else?
A I have talked to David Margolis.
Q Did he indicate where he believed the memorandum had gone?
A No. It was a did-you-know kind of thing. He didn't recall. And I have not even talked to Ms. Westbrook about it. I haven't seen her in months, too.
(DOJ Exhibit 007157 identified.)

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BY MR. GICALE:
Q Now, there are just a couple notes I'm going to show you, what is marked for identification as Bates number 007157. That's dated October 9, 1992.
Do you have an idea of whose handwriting that is?
A No.
Q That's not your own?
A No, it is not. It is to Keeney. It is a criminal division memo form. It is to Keeney.
Q Does that look like Mr. Mueller?
A I don't know. I wasn't familiar with those people, with what they looked like when they wrote something.
(DOJ Exhibit 006675 identified.)
BY MR. GICALE:
Q I'm going to show you what is marked as Bates number 006675. Would this be a copy -- it is a memorandum from Deborah Westbrook to you dated June 8, 1993, regarding the recusal of the U.S. Attorney for the Eastern District of Arkansas.

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A I believe this to have been generated by Ms. Westbrook after our conversation in which she told me the criminal division had made some recommendation. This was more than likely -- I'm sure this was on top of or attached to that document that you have referred to earlier, which was the declination memorandum written by the criminal division.
The word "Margolis" in the upper right-hand corner, that's my handwriting. The note that says "Doug, please brief me on background," that's David Margolis's writing. It looks like Ms. Westbrook's initials as legal counsel and I think Ms. Henneman's handwriting in the lower left-hand corner that says "per Doug 6/23."
Q It says "sent back to district for decision, criminal suggested declination." Is that pursuant to some conversation she had with you?
A Yes. I left the department around the 15th of June, maybe a little sooner to go down to Florida, back to the district from whence I had come in '90 to be interim United States Attorney.

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Shortly after I was there, I got a call from Ms. Henneman. She wanted to know what had happened with the package. I was surprised because I knew that we had drafted this memorandum or letter back to the district telling them that basically that if they wanted to decline the case based on what the criminal division's recitation of things were, that would be appropriate, but we didn't see a need for recusal if there was not going to be an investigation.

We gave them some -- there was an outlet, that if they felt that there should be an investigation or had further information, that kind of language, to let us know.

She didn't know about that. Ms. Henneman didn't know that that had been done. I suppose she was calling for Ms. Westbrook. Evidently that memo or that letter to the district did not go back down to the legal counsel for EOUSA.

(DOJ Exhibits 006586, 006587 and 006588 identified.)

Q I'm going to show you several other

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exhibits. The first one is Bates number 006586. That's the top one. Do you know whose writing that would be?

A No.

Q And then beneath that is 006587.

(Witness examined the document.)

A No, I don't, but since the name "Doug" is there I would assume that is probably somebody in the executive office's handwriting. I don't think anyone else would have referred to me that way.

Q And 00 --

A It kind of looks like Ms. Henneman's writing.

Q 006588, is that writing familiar to you on that note?

A That looks like Ms. Westbrook's handwriting. The stuff that is not legible, that looks like Ms. Westbrook's handwriting, I'm not positive, at the top of the page.

Q The top of the page, "public integrity, deputy's office," those words?

A Yes.

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MR. GICALE: I have nothing further at this point.

MR. KRAVITZ: Let's take a five-minute break.

(Recess.)

(DOJ Exhibit 006671 identified.)

BY MR. GICALE:

Q I am going to show you what is marked as Bates number 006671. It is a memo from you to Stuart Gersen dated February 9, 1993 -- through you from Tony Moscato. This would have been the recusal memo that you talked about earlier?

A Yes.

Q So earlier you discussed the control sheet --

A The control sheet would have been on top of this.

Q The control sheet was 017456?

A Right. Under that would have been that brief memo from me to Mr. Keeney.

Q Which was 001484?

A Yes. And then this would have been the

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document underlying this, would have been prepared by Ms. Westbrook's office.

Q Attached to that would have been Mr. Bank's letter which is 07049?

A I think so. Without seeing it all together, I don't have any independent recollection it was there, but it should have been there because that was the base documentation for the request. It says "attached letter." So I'm assuming it -- "it" being my memorandum from Mr. Moscato to me through Stuart Gersen dated February 9, 006671 -- references an attached letter. I'm certain that is the January 27 letter to Ms. Henneman from Mr. Banks.

Q Did you have any discussions with Webster Hubbell about this criminal referral?

A No.

Q Do you know whether or not he had access to this criminal referral or this recusal package?

A No, I don't.

Q Do you know whether anyone else who was there in the transition or subsequently appointed with Ms. Reno had access to this package?

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A I don't know. It went somewhere after the criminal division, but I don't know where it went. It may well have just gone to a room and sat, for all I know. I don't know.

MR. GICALE: All right. I have nothing further.

EXAMINATION

BY MR. KRAVITZ:

Q Mr. Frazier, when did you first become employed by the Department of Justice?

A 1983 or '84. It must have been 1984.

Q Have you been employed by the Department of Justice continually or continuously since that time?

A Yes, I have.

Q Do you view yourself as a career Justice Department official?

A Yes.

Q Are you protected by Civil Service protections?

A My official permanent position is senior litigation counsel for the Department of Justice. That senior litigation counsel is a form of assistant

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United States Attorney. Assistant United States Attorneys don't have what you refer to as Civil Service protections.

There are some protections that are involved such as review of some actions by the Merit System Protection Board, but it is not the same as a person who has a GS or a GM title or position with the federal government.

Q Despite that legal distinction that you have just been testifying about, do you view yourself as a career Justice Department official as opposed to a political official?

A After 27 years with the federal government, I would say yes.

Q And have you viewed yourself in that light even while you have held positions in the Deputy Attorney General's office or positions, for example, as an interim United States Attorney in Florida?

A Yes. I have never had a political appointment.

Q You testified earlier that from September of 1992 until June of 1993 you served as acting

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Associate Deputy Attorney General; is that correct?
A Correct.
Q How did it come about in September of 1992 that you took on that position?
A I was the interim United States Attorney in Nevada from June of '92 until September, after the U.S. Attorney there was removed. At the end of the 120-day Attorney General appointment that was made by Attorney General Barr, the court appointed someone else from Nevada to be U.S. Attorney, and Mr. Terwilliger, who was the Deputy Attorney General at the time, asked me to come back to Washington because some of the people in the deputy's office were returning back to their districts.
When Mr. Barr became Deputy Attorney General, he did something that has not been done before or since. He brought United States Attorneys in to function as the core of his staff as Associate Deputy Attorneys General.
He started with Jim Richmond and brought in Michael Carey from West Virginia, Jeff Howard from New Hampshire. Bob Whitwell from the northern

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district of Mississippi was there for a while, I think that is it.
Anyway, those people functioned -- and Mr. Terwilliger actually had been U.S. Attorney in Vermont. Those people functioned as the core players or core participants in the Deputy Attorney General's office. Some of those people were going home. I think Mr. Carey was going to go back to West Virginia. So they needed someone who had experience with the criminal part of the Department of Justice and U.S. Attorneys offices.
That's what my function was. I had that part of the deputy's office that did oversight for the federal law enforcement agencies and for United States Attorneys and for the criminal division.
Q When in September of 1992 did you actually return to main Justice and the Deputy Attorney General's office?
A I think I actually did not come back to Washington until October, because in September two things happened. One is I did a week of active duty in Reserves out on the West Coast, and I also went to

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Japan.

There was a major money laundering case that involved a fraud scheme in Japan. When I was U.S. Attorney in Nevada, that was the biggest case we had. I went to Japan and spent some time with the prefect of Tokyo's prosecutor's office and with the Tokyo Metropolitan Police who were investigating the Japanese side of the case and put together some agreements on how we would reimburse the Japanese victims with the forfeitures of millions of dollars we found in this country that had been laundered through Nevada.

Q You actually arrived in Washington sometime in October of 1992?

A Yes. I recall I knew that the court was going to appoint someone else as I was leaving. I think by the time I returned from Japan, he was already appointed. I took some leave, went home to Florida and then came up here to Washington. I think it was probably the first week in October.

Q Of 1992?

A Yes.

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Q What types of things did you work on between your arrival in the Deputy Attorney General's office in the first week of October 1992 and the presidential election the first week of November 1992?

A Anything that came into the deputy's office that involved criminal matters. Some of them were very sensitive investigations that were ongoing. A lot of it had to do with some of the squabbles between DEA and FBI over the National Narcotics Intelligence Center, funding, asset forfeiture sharing, funds and where they were going for what projects, digital telephony, surreptitious entry issues and funding for some things the FBI needed, issues of recusals, deputizations and a lot of these INS deportation issues.

By another statute somewhere or CFR, the Deputy Attorney General was the decisionmaker on the deportations of aliens convicted. And also about that time Guantanamo was full of Haitians and Cubans, and those who were very ill, mostly with HIV or other incurable diseases, could not be treated by the

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military doctors and they were patriated into this country, paroled in for medical treatment if they were sponsored, those kinds of things.

Q What is a deputization?

A That's where a threat upon an assistant United States Attorney results in their being deputized as a United States Marshal for the purposes of carrying firearms for protection.

Q Were you the senior person on the criminal side in the Deputy Attorney General's office during this time period?

A Not initially, but eventually.

Q Can you explain what you mean by that.

A As people left, I moved up. Eventually I was the one person there with the light bulb on.

Q I guess I was --

A It is not easy to explain. When I first got there, I handled a few things on the side. Then something happened in a case that was very sensitive at the time, and I ended up handling it. After I handled it, evidently everybody was pleased and I got more and more work to do.

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Q When was that?

A That was in the fall. That would have been by November, right about the time of the election. I'm trying to think. I remember when I moved offices. It would have been before the election, probably by the 1st of November.

Q By the 1st of November or thereabouts, you were the seniormost person on criminal matters in the Deputy Attorney General's office?

A Yes and no. When Mr. Howard was there, he was the principal associate deputy.

Q This is Steve Howard from New Hampshire?

A Stuff might go through him. He was not there a lot. When Mr. Whitwell was there, he might have handled it. There wasn't a hierarchy. You were tasked. Because that's what I knew anything about, I gravitated into that criminal portfolio, we called it very quickly.

Q Is it more accurate to say then without referring to hierarchies by early November you were being tasked with the most serious criminal issues that came into the Deputy Attorney General's office?

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A If they came to the deputy's office, for the most part. Not all. There were some things that were handled -- there were other parts of the department. For instance, there was a special counsel for financial institution fraud, and by statute, that person is on the Deputy Attorney General's staff.

However, Ira Raphaelson was also counsel to the Attorney General, Mr. Barr. Mr. Raphaelson handled all criminal matters that had to do with financial institution fraud. He had oversight over the criminal division and U.S. Attorneys offices for those matters by statute. So I wouldn't have had anything to do with financial institution fraud cases.

Q So, during the time period that I'm looking at, early October 1992 through early November 1992, did Mr. Raphaelson consult with you on any financial institution fraud matters that came into the Deputy Attorney General's office?

A Yes, but -- and I have to explain this -- I had worked for Mr. Raphaelson when I first came to

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Washington in 1990. My initial tasking was to be detailed as an assistant U.S. Attorney to come up and work in the financial institution fraud crisis center for the department. The special counsel at the time was Jim Richmond. He was replaced by Mr. Raphaelson.

The special counsel had no staff assigned. But the criminal division function part of the fraud section of the criminal division functioned as staff as did parts of the executive office for U.S. Attorneys. I was head of what was called the priority programs team.

There was a relationship that involved financial institution fraud. I went to conferences and spoke in the arena, and I'm sure Mr. Raphaelson and I talked about financial institution fraud issues, but it would have been more in terms of can you get something for me from EOUSA.

Q His asking you?

A It would not have been on the merits but on the reporting. I was involved in the reporting to Congress aspect. So when it came to the numbers that

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we were giving to Congress with regularity, I had a role in those numbers and getting them from the U.S. Attorneys offices and maintaining a database, but that's because I started that in 1990. I was not involved in any substantive issues of the merits of a criminal case, like BCCI or anything like that that was going on. I did become involved in BNL.

I got involved in BNL because I was tasked with setting up for Judge Lacey all of the resources that he needed, and basically cooperated with JMD and the FBI and got people assigned to him and got him billeting and all the reports. I sort of had a logistics role. That takes us up to the inauguration.

Q When you would -- strike that. During the time period early October through early November 1992, when you would have criminal matters or issues to deal with as a member of the staff of the Deputy Attorney General's office, what officials in other parts of the Department of Justice would you have contact with relating to those matters?

A Normally only the criminal division or

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maybe EOUSA. You have to remember what I did was policy issues. The deputy plays very little if any role in criminal investigations. Recusals we handled. Some things would come to the deputy for decision by default, and I will give you one example without going into particulars.

Senator Robb was being investigated, as we all know, and we all know that there was no true bill to the grand jury. What happened in that case and one of the reasons they changed the recusal policy was that Mueller was recused because he knew Senator Robb --

Q That's Bob Mueller, for the record?

A Yes, he was recused. The two U.S. Attorneys in that district during the time of the investigation in the Eastern District of Virginia both recused themselves. The Attorney General was recused eventually at about decisionmaking time because he was interviewing with a law firm or something that had representation issues.

Basically the chain of decisionmaking in this case went from the Assistant U.S. Attorney in

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Norfolk to Jack Keeney to George Terwilliger, who was the acting Attorney General for everything on this case. So, there was nobody there.

In that case, the deputy's office played a role in some decisions that had to be made in that type of a case. But absent -- that was because of the nature of the case. Absent that, I don't recall -- I think there were some things going on with Senator Durenberger's case at about that time.

Other than that, there was no decisionmaking about the merits or nonmerits of criminal investigations. We knew about them if there was something politically sensitive going on. For instance, if there was a federal judge being investigated, I probably knew about it, but didn't have any role because nothing came up for decision during that whole time.

What I did was policy issues like keeping DEA and FBI from total warfare over the Drug Intelligence Center or deciding how we would spend money on things.

Q You testified that when there would be a

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criminal investigation of some political sensitivity, you would know about it as a member of the staff of the Deputy Attorney General's office.

A Might or might not.

Q How would that come to your attention? Was it as the result of some kind of rule or directive from somewhere in the department?

A The way I would know officially would be that if it was a sensitive matter, then a sensitive report would be generated, and that would be from a U.S. Attorney's office. That would come through the executive office for U.S. Attorneys. They would hand-deliver copies of that to the deputy and to the Attorney General and maybe to the criminal division and then they would also route those things through Exec Sec.

I would see them either because it got delivered to me and it might have been that I was down in Mr. Moscato's office and he said here is a sensitive, will you take the deputy's copy upstairs and I would say sure, or I might see it when the Exec Sec copy came in.

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It would have come through me, probably by December. Anyway, I would have seen -- and probably before then. Because I recall seeing them and going in and asking the deputy, Mr. Terwilliger, did you know about this, and he always for the most part knew already, which means he probably had a hand-delivered copy before I saw the one that came through Exec Sec.

Q You mentioned this one example of one of these sensitive cases a situation where a judge might be investigated. What other types of cases would merit the determination or the title of a sensitive matter?

A Well, I think Mr. Banks told the department that there was a referral or something that came in, and I recall this was right before the election, that basically President Clinton and his wife were alleged to have some involvement with, as I think I recall it said, maybe as potential witnesses.

Q Was that a typical example of one of these sensitive cases?

A The only one I ever saw about a

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president-elect or now president. That's the kind of thing, yes.

The rule of thumb would be if the Attorney General needs to know because CBS may call him or her tonight and ask, you want to keep him informed. It is those kinds of things that would generate interest by Congress or by the news media or the public in general, those kinds of things, things that were sensitive.

Q The purpose of a sensitive case memo was simply to inform the Deputy Attorney General and the Attorney General so that they can know what's going on and respond to questions if necessary?

A It is a mechanism to keep the department's leadership informed of issues that they would need to have knowledge of.

Q When was the first time that you learned about the criminal referral in the Madison case? And specifically, I'm referring to the 1992 criminal referral.

A Sometime during October.

Q Of 1992?

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A Yes.
Q How was it that you first learned about the existence of this criminal referral?
A I saw an urgent or a sensitive report.
Q Are those two terms, "urgent report," "sensitive report," interchangeable?
A They are not now, but actually I developed a system to make this automated after transition. So this is now done electronically. I think they are now called urgent reports. They have been called different things at different times by different administrations.
Q But they are the same thing?
A Urgent or sensitive report. I don't know what it is officially referred to in the attorney's manual.
Q You said you saw this report in late October 1992?
A Sometime in October. I don't remember if it was -- it had to be toward the middle to the end of the month because I recall getting there pretty early in October, and I know that -- or maybe the end

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of September. I do this by changing offices and moving up.

This is silly, but the Deputy Attorney General has an office and there is an interconnecting door where the principal Associate Deputy Attorney General sits and there are a line of offices that all interconnect with their all internal doors inside, not in the corridor. You sort of start on one end and rotate down and work your way up to where the principal deputy was.

I moved from an office not connected into a connected office and got moved up. I was in there, because I recall walking through the private passageway into the deputy's office to tell Mr. Terwilliger or ask him had he seen this and knew about it.

Q Where was the urgent report when you first saw it?
A It came in my "in" basket.
Q Do you know where it came from?
A Exec Sec.
Q It came from the Little Rock office and

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then to --
A It would have gone through EOUSA. They would have prepared the package to send up to the people in the department who got notified.
Q From the U.S. Attorney's office in Little Rock to the executive office of the U.S. Attorneys at main Justice first?
A Yes.
Q And then from the executive office through the executive secretary to you?
A Should. There are copies that are sent to everyone that needs to know. These are not decisionmaking. They are informational. They are not decisionmaking packages. They are informational. Copies go out to all those people that need to know. They also hand-deliver them as well as route them through -- of course they route them through the Exec Sec so that there is a control and so that you have a stop and make sure nothing falls through the crack.
Q What did the urgent report consist of?
A I just recall it had a sketch of some

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information. I only read the cover sheet to it that gave the summary.
Q So it wasn't a copy of the entire referral?
A I don't know. It could well have been. If it was, I wouldn't have looked at it. I would have just looked at the control sheet, looked what the summary said and gone in and said George, did you know about this, and he said yes, and that was it.
Q George is George Terwilliger?
A Yes, the Deputy Attorney General.
Q Did Mr. Terwilliger indicate to you how he knew about the criminal referral before you went in and talked to him about it?
A No, I don't recall that he did.
Q Was anyone else present during the time you talked to Mr. Terwilliger about the urgent report?
A I don't believe so. I probably had five things. I assumed that he knew about it because of the nature of what it was. I figured that he knew before I did. They weren't going to come find me and make sure I knew. But they sure were the Deputy Attorney General.

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Q What else do you remember about your conversation with Mr. Terwilliger in October 1992 relating to this urgent report about the Madison referral?

A That it was sensitive, and my sense was that we weren't going to do anything with it, "we" meaning the deputy's office, was not going to start calling down and asking what are you doing, what's going on.

It wasn't a conversation. It was more of a sense of talking real quickly and knowing that this was right before the election, it would look like an awfully cheap shot. There wasn't a lot of information that I saw. It just had allegations of maybe potential witnesses, lots of that sort of stuff was going on. You get letters from nuts and kooky things that happen all the time. You sort of filter this. It was just very sensitive.

Nobody was going to make a big deal. I was surprised and still am to this day that it wasn't in The Washington Post.

Q Let me sort of back up and clarify some of

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the things you have said for the record. You said that you get letters from all sorts of nuts. You mean during the period leading up to the election, the Justice Department was receiving letters from people making allegations about the Clintons?

A They have gotten letters like that since before I was there and I'm sure they still get them, you know, dear Mr. Attorney General, dear Deputy Attorney General, dear anybody, some of it may be two deputy attorneys general ago, somebody writes in and complains that the black helicopters are flying over them or the Korean CIA has implanted a device in their brain.

Q We get letters like that here and we tell them to write to the Justice Department.

A We figured that. They do send them over from Congress. Congress gets letters from constituents and they get referred to the Department of Justice for an answer. You get lots of those kinds of things. This one was so close to the election.

Q How close to the election? Within a week?

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A It was within several weeks. It was upon us. I was one of those who decided this was a done deal and you may as well pack up and get ready to go back to Florida. It was that close.

Q Was this conversation with Mr. Terwilliger that you have been describing the only conversation that you had with Mr. Terwilliger before the election about the criminal referral?

A I think it is the only one I ever had. There was no -- that document was informational only. There was nothing the Deputy Attorney General would do with it except know about it, because the fraud section, the special counsel, those people are the people that would deal with the nuts and bolts of an investigation, the merits of it and that sort of thing. There is no loop here, unless it came down and required the Deputy Attorney General to decide whether or not to seek an indictment.

Q Based on your conversation with Mr. Terwilliger, did you get a sense as to whether Mr. Terwilliger had an opinion of the merits of the criminal referral?

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A No.

Q What did Mr. Terwilliger tell you that he knew about the criminal referral?

A Nothing. It was do you know? Yes, I'm aware of it.

Q He didn't say anything about what the allegations were?

A No.

Q Did Mr. Terwilliger appear to know that the Clintons were mentioned as witnesses as opposed to being mentioned as suspects?

A All I can say is he knew it mentioned the Clintons. That's why there was an urgent report or sensitive report done. We didn't talk at all about the merits or what it was about or anything. My job was to know, to make sure that he knew about it and once he said he did, that was it.

Q Did Mr. Terwilliger indicate to you whether any other high level Justice Department officials knew about the criminal referral?

A No.

Q Do you have any sense or do you know

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whether any other high level officials --
A Sure they did. I am sure they did. I know that I think at one juncture, probably after that, I saw Mr. Raphaelson either in his office or in the hallway and mentioned to him that I had seen that urgent report and it was obvious he knew about it, but we didn't discuss it or what was going on or anything like that. It was one of those things did you see that urgent report about the Clintons, yes, I did. I assumed he did know about it. That's where it would have gone to, because he was the special counsel.
Q Who makes the decision to send something around to the high level offices at the Justice Department as an urgent report?
A Well, it is incumbent on the person handling the issue to start the chain of events, to send the letter or make a phone call or fax something in, and the executive office is sort of the repository for it. That is for U.S. Attorneys. The criminal division has its own mechanisms.
Q Mr. Banks initiated the process by sending

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something to the administrative office?
A He must have.
Q Did Mr. Banks identify whatever this was as an urgent report or is that title put on it at the Justice Department?
A I don't know what he did in this particular case. He could have or he might have just sent them something. Sometimes things happen and the executive office finds out and they decide that that is important and the director causes a report to be generated.
I have had to call districts and say what do you know about this, what is going on and get the information from them when I was the deputy director of EOUSA and to send it upstairs because the assistant didn't think it was important, but the perspective was this is something the Attorney General ought to know about.
Q Did you have an opinion, any opinion as to the merits of the allegations in the criminal referral as of the time that you spoke with Mr. Terwilliger?

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A No.
Q Were it not for the approaching election, do you think that your reaction to the referral would have been different?
A I think the nearness of the election caused me to kind of go, whoa, look at this one. Had it been in January of 1992, I probably wouldn't have gone right into the deputy to make sure that he knew. I might have waited for an hour or done something else. But this one was of sufficient sensitivity that I went in there as soon as I saw it to make sure that he knew. That was my job.
Six of one, half dozen of another, if someone is a candidate for president or if he had just been governor, that would have been sufficiently sensitive for the department leadership to know about it.
Q Other than talking to Mr. Terwilliger, did you do anything in response to your receipt of this urgent message in October 1992?
A No.
Q Do you know whether any other employee at

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the Department of Justice did take any action with regard to the criminal referral?
A Well, I have seen the documents where the criminal division wrote a declination.
Q My question --
MR. SGRO: Can we get a time frame?
BY MR. KRAVITZ:
Q During the time period leading up to the election on November 3, 1992, to your knowledge, did any Justice Department employee, any main Justice Department employee take any action with regard to the criminal referral in the Madison case?
A I don't know.
Q Do you know whether any other discussions regarding that referral took place other than the one between you and Mr. Terwilliger before the election?
A No.
Q You don't know one way or the other?
A I don't know one way or the other.
Q After your discussion with Mr. Terwilliger, what did you do with your copy of the urgent report?
A Put my initials on it showing that I had

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seen it and put it in my "out" basket.
Q To go where?
A I don't know where they sent those things, honestly. I don't know if it went back to Exec Sec. I don't know what the secretaries did. I have thought about that now. It is one of those things you never asked. I don't know what they did with them.
As an Associate Deputy Attorney General, there was no necessity for me to keep any files because it was a rare occasion when I generated anything. Mostly I was receiving something from some part of the department for a decision, the decision would be made and it would go back to the person that initiated it. There was no need to keep copies. The Exec Sec keeps the chrons and keeps the files.
So, I don't know what the secretaries did with that copy. I'm sure that they did something to let the Exec Sec know that it had been seen, but I don't know how they did that.
MR. KRAVITZ: Off the record.
(Discussion off the record.)

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(DOJ Exhibit 017458 identified.)
BY MR. KRAVITZ:
Q Mr. Frazier, I'm going to show you a two-page document Bates stamped 017458 on the first page and unfortunately the second page has no Bates stamp number on it or at least none that I can see.
I'm going to show you a two-page document marked 017458 on the first page. The second page has no Bates stamped number, but it is dated October 7, 1992. On the top says "Referral from the Resolution Trust Corporation" and it appears to be -- it lists William Barr, George Terwilliger, Wayne Budd and Lawrence McWhorter. It appears to be initialed by Mr. McWhorter.
(Witness examined the document.)
I ask you if you can identify that two-page document for us.
A I know that it is an urgent report or a sensitive report. I have seen it. I have been shown this document by several different people.
Q Are you able to say today whether this two-page document is the urgent report you have been

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testifying about that you received sometime in October 1992?

A I don't know if it is this one or the one that was done subsequent. I can speculate that it was -- that I saw the later dated one, because the 7th of October I was still, like I said, up in another suite of offices and I don't think that I would have seen this at that time.

Q Let me show you --

A Also, something else happened. One of the other associate deputies who sort of was acting as chief of staff and who routed paperwork went elk hunting and was gone for like three weeks right about this time, which is why I sort of gravitated to the other offices and started seeing a lot of this paperwork. I think I saw the one subsequent.

(DOJ Exhibit 006692 identified.)

BY MR. KRAVITZ:

Q 006692 I show you. I ask if you can identify that document.

A It is another one of these sensitive reports. It is on the same sort of topic. Can I see

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the other one?

Q I think it is over there.

A Let's see how it is worded.

Q Just for the record, while you are testifying, if you could refer to the documents by their Bates stamp, although I suppose one doesn't have a Bates stamp.

A I don't know whether 006692 dated October 20th is the one I saw or if the unnumbered one dated October 7th is the one I saw. But I mean they are very close in information. I wouldn't be able to tell from looking at them which one it was because they both mention the President and Ms. Clinton.

Q Do you know why there would have been urgent messages sent both on October 7, 1992 and on October 20, 1992?

A Well, the one on the 20th says "this is an update to the previous urgent report dated October 7th, copy attached." So obviously there was some more information that came in.

Q Does the fact that there is an update indicate that one of the addressees had requested an

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update?
A Not necessarily.
Q In other words, Mr. McWhorter might just have determined that it was appropriate to send an update?
A Mr. Banks may have decided it was appropriate to send an update.
Q You just don't know?
A I don't know. You have to remember, the point of all of this and the urgent report is that at least I thought that this was going to hit the news media. Like I said, I was surprised when I never did see anything in The Washington Post about it.
That was the purpose of updating. You can imagine if this had hit the media the questions that would have been posed to the Department of Justice about what's going on and this, that and the other thing. There was a need to know some information about this, but it was kept very closely held because of its sensitivity. It wasn't something you wanted tacked up on the bulletin board or flying around the Department of Justice.

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Q You have testified about some actions that you took with regard to this criminal referral in February of 1993. Did you have any involvement with or any discussions about the 1992 criminal referral in the Madison case between the time of your conversation with Mr. Terwilliger in October 1992 and the actions related to the recusal package that you were involved with in February of 1993?
A I'm not sure I understand your question.
Q Okay. I will ask you -- I will ask you maybe a little more open-ended. After your conversation with Mr. Terwilliger in October of 1992 regarding the urgent message, the urgent report, what was the next conversation you had or the next action you took regarding the 1992 criminal referral in the Madison case?
A I didn't ever take any action regarding the referral until May when the criminal division wrote its declination letter.
Q I guess I don't mean to use the word "action" as having any particular meaning. What was your next involvement either by doing anything or by

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talking to someone?
A My next involvement was to talk to either Mr. Moscato or more likely Ms. Westbrook. They brought to my attention that there were conversations with Mr. Banks and that he was concerned because of the sensitivity of this case and was uncomfortable with the case.
I recall that they -- my memory is that I said it sounds like he ought to send in a recusal request. That would be the best thing for the district. It is a small district. Besides the fact that the President-elect is involved in this issue, he was the governor of that state. That U.S. Attorney's office just probably shouldn't have been involved in an investigation like that because of the appearance of impropriety.
Q When were these conversations that you were having with Ms. Westbrook and Ms. Henneman?
A I recall having them on several occasions. I'm not acting as an Associate Deputy Attorney General telling them. I'm sort of consulting with them and saying -- and Deborah used to work for me

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when I was the deputy director -- this is what I would do. If you send it up, we will act on it.
I do recall a conversation that they had gotten in a letter from him, and he didn't really request recusal. I think they read me some of the language in the letter, and I said, well, if it walks like a duck, it is a duck. Let's do it. Put it together as a recusal package and we will act on it. Eventually we got that package.
Q This was the January 27, 1993 letter from Mr. Banks?
A I think so.
Q Were any of these discussions that you were having with Ms. Westbrook, did any of them occur before January 20, 1993?
A January 20? I'm sure they did. I recall having a couple of discussions with Ms. Westbrook and I think in passing -- when you know these people and you see them, Mr. Moscato might have said Banks is still worried about this thing and doesn't know what to do. It wouldn't require a response on my part.
I do remember thinking if we get this thing

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in here, I could act on it and get it done and get the office off the hook. My concern was about the office.

Q Just so the record is clear, what you are saying is if they got the letter into your office by January 20th, you could act on it?

A We knew that the end was coming. But my concern was the U.S. Attorney's office and what they were going to do or not do and were they uncomfortable with this case and what should be done.

So, had we gotten it quicker, had there been a recusal request quicker, it might have been acted upon. I would not have acted upon it without asking Mr. Terwilliger if he wanted me to. He might have said no, let's leave this for the next administration, because we are going to turn over U.S. Attorneys and that sort of thing. I don't know. That is purely speculation. It didn't come in until --

Q After the inauguration?

A After. And therefore it had to go to

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somebody else to make a decision on.

Q I think at page 41 of your deposition in the House you described as mass confusion what was going on at the Justice Department or at least in the upper floors of the Justice Department during the transition period. I hope I haven't misquoted you.

Can you give us some sense as to what you meant by that.

A Imagine on a day in which everybody who is a decisionmaker for the most part leaves the department at once and there is no one there. All the names of the people have changed. The only person left behind who is a political appointee was Stuart Gersen, and he had all the titles. Everybody, all the schedule Cs, all the political appointees were gone.

No one knew who could make a decision. You now had a new president, so Mr. Gersen reported to the President of the United States. A few people came in to the office. There were some transition people who had been coming in before the inauguration and asking questions. No one knew how all of this

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was going to sort out.
There wasn't an Attorney General. The first two names that came up got shot down. That really added to the confusion. I think that everybody planned to have an Attorney General much quicker than they did. Since the Attorney General didn't get in place, the Associate Attorney General didn't get in place or the deputy as soon as they may have been.
No one knew where to send anything except to Mr. Gersen. Many people were uncomfortable with acting. You remember in the Department of Justice the number two person for the most part in each of the sections, the person under the Assistant Attorney General is normally a career person. Jack Keeney has been the acting Assistant Attorney General of the criminal division God knows how many times because he has been with the department since I was born.
People were a little reticent to act. You are a career person. You don't know if you are going to stay in the same job. The correspondence doesn't stop. The work doesn't stop. People are getting

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indicted in the field. Trials are going on. But the entire hierarchy of the department ceased to exist on one day, and it took until May to get it semi reestablished.
Add to all that the just mass of correspondence that came into the department, it would have been bad enough if you just changed presidents in the same party, but now the party has changed. So all these letters of congratulation and people wanting jobs. There are people from the White House coming over and nobody knows who these people are, what their role is, are they going the stay, where they are going to be. They don't have clearances at first. Mass confusion is kind.
Q Did this mass confusion continue -- I think you just said until at least May?
A In my perspective, it did. The other thing that happened is shortly after the inauguration, they fired all the U.S. Attorneys. That added to the confusion because then you had to appoint -- the Attorney General had to appoint an interim U.S. Attorney, some of whom were first assistants in

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districts, some of whom weren't.
So, then the White House had all of its backdated correspondence and it shipped it out all over the government to answer the mail for the President to try to keep up.
It stayed pretty confused for quite a while. I don't think Ms. Harris was in as the Assistant Attorney General of the criminal division until after June. A lot of the people didn't end up in their positions for quite a while.
So, it was confusing because there was no one there to make a decision. Eventually -- initially, it was just Mr. Gersen. He has to make the decisions for all of these different entities, and then subsequent to him Ms. Reno, and she didn't have a deputy and she didn't have a confirmed associate. So it was pretty confusing. They were bringing in all these people to try to handle the mail.
That was the big thing, just handling the correspondence and getting it routed to the right place. All these people who come into the department

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for the most part had little or no experience within the department. They didn't even know where the bathrooms were for a while.
Q It goes without saying that the fact that the 1992 criminal referral in the Madison case hung around in the Justice Department for several months without any definitive action being taken and has already gotten a fair amount of attention and I suppose will get more attention in the near future.
But based on your familiarity with what was going on in the Justice Department during the first six months of 1993, are you aware of other matters or cases that were either sent to the Justice Department or that arose within the Justice Department that in normal times would have been acted on more quickly but because of the transition confusion had their actions delayed?
A I think there were lots of things that if it took the Attorney General or the Deputy Attorney General to make the decision, that didn't get acted on very quickly. The problem with this was that the recusal policy put the decisionmaking at the Deputy

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Attorney General's slot.
You have to remember, down in the sections, the work was going on. In the criminal division, there were people there, there were section chiefs, there were heads. There were still people in the field investigating cases. So the work went on.
It is those things that had to come up to one of the top two or three rungs of the department for a decision, and sometimes when you look at it you wonder why in the world does the Deputy Attorney General have to make this decision. But that's because you inherit the system.
Q So, just to be clear, the rule requiring that a recusal issue go to the Deputy Attorney General's office was a rule that predated the Clinton Administration?
A Yes. It is very shortly before.
Q It was a rule that was put in place during the Bush Administration?
A It was put in place by the Deputy Attorney General George Terwilliger after my arrival in September-October of 1992.

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Q Are you aware of any other cases involving recusal issues that arose during the first six months of 1993?
A I don't recall any others that came in. I know it was not -- this was not -- "this" being the Whitewater one was not the first one that we did, but we had not done many.
Q Mr. Frazier, I'm going to show you what has been marked as 017456 which I think you have previously identified as an Executive Secretariat history data sheet regarding the recusal request in the Madison case. Is that accurate?
A Yes. It is the history data sheet.
Q Does that indicate what date the recusal request was made on?
A It --
Q Or at least what date the recusal --
A It has the date they received it, "they" being the Exec Sec.
Q What date is that?
A February 9.
Q 1993?

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A They would have received it from Mr. Moscato on 2/9/93.
Q And that is the request that was -- that is the package that was going through Mr. Gersen to Mr. Keeney?
A Yes, through me to Mr. Keeney to Mr. Gersen.
Q I'm sorry. I misstated that.
Is there a due date indicated on that document?
A There is. The first one that went out probably didn't look like this, because this has updated information on it as late as 2/3/94. This is the history of that document from when it was logged in until it was -- there is a closeout here, closed per criminal. It also says here that they sent a copy to Exec Sec on 3/19/93. "Will furnish Exec Sec with a copy of reply. Due date changed to 5/16/94."
All of that is a continuing history. This is a database you are looking at that tracked this document. When it was first generated, it did not look like this. I looked like this but didn't have

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all this information.
Q Do you know whether there was a due date when this recusal package was first generated?
A I recall that they established due dates, if there was not one made in the requester. In other words, if Mr. Moscato or I put due date on there -- of course you aren't going to do that if it is going to the Attorney General. You don't put due dates on there.
For tracking purposes, I think they had a date they put in there that was X number of days from the day it was generated. You would have to ask them how they controlled. It refers to two other Exec Sec control sheets attached.
Q That's helpful. The bottom line then is this document, 017456, should not be interpreted to mean that somebody gave anyone 3-1/2 months to make this --
A That's '94.
Q -- actually 15-1/2 months to work on the recusal package.
A That ended up being a date because of

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resolutions. What would have happened is it would go to the overdues. It looks like they started trying to find this package. The criminal division couldn't find copies of it. That's how they track. That's your whole sheet of information as of the date it was generated.

I don't know how to read those things anymore, but there ought to be a date that tells you when it was generated. All of that means something. But two secretaries in the Department of Justice know how to read that; you don't need to know how to read it. The due date, they dispense a date on there, that was standard operating procedure, unless there was one called for.

If the Attorney General sent this thing and said I want to know by next week, it would say on there and you would start hearing every day.

Q You testified previously that in early 1993 you had conversations with Ms. Westbrook and I think you said also Ms. Henneman about Mr. Banks's concerns about his continued involvement in the case and that you believe that your conversations and conversations

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that Ms. Henneman and Ms. Westbrook had with Mr. Banks resulted in Mr. Banks sending a letter on January 27, 1993 to the department; is that accurate?

A That's my perception, because I recall them acting kind of confused. I had these conversations more than once but only a couple, three times. There was some confusion kind of, well, what do we do. I made the suggestion this is what you ought to do, and then eventually it happened. I can't say. Maybe they independently decided that's what they were going to do. There were conversations about it.

Q Are Ms. Westbrook and Ms. Henneman career officials at the Justice Department?

A Yes. Ms. Westbrook is now a legal counsel for the U.S. Marshal's service, and Ms. Henneman still works in EOUSA.

Q Neither of those two officials was a political appointee as of January or February of 1993?

A No.

Q You also testified that you at least were involved in a decision to interpret Mr. Banks'

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January 27, 1993 letter as a recusal request. Were any political appointees involved in the decision to interpret Mr. Banks's January 27 letter as a recusal request?

A I don't know who else talked to Ms. Westbrook, but I do recall that conversation, and it was either --

Q A conversation you had with --

A I had a conversation either with Mr. Moscato or Ms. Westbrook, more likely with Ms. Westbrook. I do recall a conversation in which she mentioned that they had gotten something in from Mr. Banks, but it wasn't a flat recusal request. I recall having a conversation about what it did say, and I said well, for all intents and purposes, it is. Let's treat it like it is one.

I do recall the conversation, and then it did come up. That was the conversation, well, heck, for all intents and purposes, that's what it is, he says he is uncomfortable with this, let's decide if he needs to be recused.

Q Who made the decision then to send a

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recusal package to the criminal division on its way to Mr. Gersen?

A I'm sure it was me.

Q The purpose for sending it via the criminal division as opposed to directly to the Attorney General was what?

A To have the criminal division's input as to, one, did they agree with EOUSA. Mr. Gersen is acting as the Deputy Attorney General. I would get the package in with a -- from Ms. Westbrook, and it would have a recommendation, should there be a recusal and if so, who should handle the case.

We would then staff it through the criminal division to get, one, their agreement as to whether a recusal was appropriate. I wasn't too concerned about the appropriateness but who they thought should handle it, because that should have been --

Q The recusal --

A Did they think it warranted the criminal division's intervention or did they agree that maybe another U.S. Attorney's office should handle it or maybe it is the case of a law firm of a new U.S.

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Attorney is handling, the U.S. Attorney is blanket recused depending on each set of facts.

So, they -- in this case, it was basically my opinion they were going to tell me which section it was going to go to because I thought this was something that ought to be handled at main Justice, not by a U.S. Attorney's office especially a small one in the state where the President had been governor.

Q Is it accurate to state that no political appointee was involved in the decision to route the recusal package through the criminal division on its way to the acting Deputy Attorney General?

A That was the policy. The policy was for it to be staffed through the criminal decision for their input before a decision was made.

Q So no political appointee was involved in the decision to route it that way?

A That was Mr. Terwilliger's -- that's what he wanted done with them when we developed the policy right when I first got there.

Q We are now talking about February of 1993.

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A No. I did what I would have done regardless.

Q Are you aware as to whether any political appointees were involved in the decision within the criminal division actually to write a memo addressing the merits of the criminal referral?

A I don't know.

Q Do you have any knowledge as to how the determination was made that a memo should be written?

A No.

Q Do you know Mark MacDougall?

A No.

Q Do you know who he is?

A No. I know from seeing the document that was shown to me that he was an attorney, I would assume an attorney in the fraud section in the criminal division.

Q Buy the title --

A He is on the lowest rung in the section.

Q That title indicates that Mr. MacDougall was in a career as opposed to political position as of March of 1993?

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A I would assume so. I have never known a trial attorney that was a political appointee. Normally they have a title bigger than trial attorney. It is hard to tell in the department. They get changed from time to time. When I was in the Deputy Attorney General's office, there was not a career Associate Deputy Attorney General. Now there is.

Q You testified earlier that in February, March, April, May, that period, 1993, you received numerous requests for information about the referral from the executive office, the U.S. Attorney's office. I assume those were from Ms. Westbrook and/or Ms. Henneman; is that right?

A That's correct.

Q Did either Ms. Westbrook or Ms. Henneman tell you during that time period why it was that they were contacting you to request information about the Madison referral?

A I don't recall. It could well have been. They might have just said this is open, we have a tracking sheet on it. It might have been a tickler

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system. They might have had a conversation with the district. I don't recall.

Q Do you remember either Ms. Henneman or Ms. Westbrook mentioning to you that the executive office was receiving inquiries from the RTC in Kansas City or specifically from a woman named Jean Lewis?

A I don't think that they did. The reason I say that is because I got a phone call back in '93, and the person said do you know that your name is in the Congressional record, and I said I don't read the Congressional record, do you? And this person said yes, and they faxed me a copy.

And there was my name and it was linked with Ms. Lewis and RTC and Donna Henneman, and it related some conversations. And I was pretty surprised by that. I to this day wonder what in the heck RTC was doing calling Donna Henneman and why in the world she was having anything to do with them.

She is a secretary who handles some of these quasiethical issues like recusals and shouldn't have had anything to do with referrals. Referrals went to the special counsel and they went to the

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criminal division. There was an interagency bank fraud working group made up of RTC and all the other regulatory agencies and law enforcement and the Department of Justice that regularly met to discuss cases.

For the life of me, I cannot figure out how she got in this or why she would have been.

Q Did you ever ask Ms. Westbrook about that?

A No, I didn't. I didn't, because none of this -- that question didn't come to my mind until I found out about it. By then I had left and was back in Florida and Ms. Westbrook was gone to the Marshal's service. I am still I guess out of some desire to just be accommodating or try to help people who call seeking help, but they had no business being involved in that.

Q You yourself have experience as a high level official within the Executive Office for the United States Attorneys; is that correct?

A If you want to call it high level. I have been the acting director and I have been the deputy director, yes.

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Q Are you aware of other instances in which investigators from field offices have contacted the executive office to inquire about the status of criminal referrals they have made?

A I never have known of one, no.

Q If you had received -- if you received a call as acting director or deputy director of the executive office from an investigator in a field office about a referral that that investigator had made or that investigator's office had made, would you view that as an appropriate inquiry?

A I would have said call Allen Carver, here's his phone number, he is the acting special counsel, because we don't get involved in that.

The only time the executive office would get involved, if the FBI headquarters or DEA or the Marshal's service had a conflict with the U.S. Attorney, which happens from time to time, the executive office may try to referee the conflict initially and resolve it at that low a level before it had to go up to make a decision by the Deputy Attorney General who the U.S. Attorneys work for.

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You might have been involved in something like that.
The answer here was we don't handle referrals, and I think just based on what I read in the Congressional record, I'm not sure Ms. Lewis ever knew the difference between a referral and a recusal. There are two separate things, and you look at recusals one way and referrals go to the criminal division.
I don't know what Ms. Henneman was doing being involved in that.
Q You have also served as an acting United States Attorney; correct?
A Twice.
Q Once in Nevada and once in the Middle District of Florida?
A Correct.
Q In those positions, have you received inquiries from administrative agencies or investigators at administrative agencies regarding the status of criminal referrals that have been made from those agencies?
A All the time.

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Q So that's not unusual?
A No. You spend a good deal of your time brokering your resources in conjunction with the agencies. If they put lots of resources into the case, they would like you to concomitantly put the prosecution resources in, too. We don't always agree. You spend a lot of time with those sorts of issues.
Q Now, your memory is that Janet Reno was confirmed as Attorney General sometime in March 1993; is that correct?
A Correct.
Q And Mr. Heymann was confirmed as Deputy Attorney General sometime in, I think you said May or June of '93?
A I don't recall. May sounds about right to me because he was confirmed not too far before I left. So that would have been about the end of May. Could have been the first part of June. I don't really remember.
Q Was there an acting Deputy Attorney General between the time of Ms. Reno's confirmation and the

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time of Mr. Heymann's confirmation?
A Not that I'm aware of.
Q So during that time period from sometime in March until sometime the end of May 1993, was Ms. Reno the person who would have had final decisionmaking authority on recusals, similar to the way that Mr. Gersen did previous to that?
A If there was not someone designated as the acting Deputy Attorney General or if there was not someone designated as the acting Associate Attorney General, then by necessity it would have to go up, not down, so it would have to be the Attorney General.
To my knowledge, it was not delegated. No one was given the authority to do it. I wrote a letter to Ms. Reno when she first came in and sort of outlined who I was and why I was sitting down there. I had met her in Miami when I was first assistant and she was the state's attorney. I attached copies of the sorts of things I was handling and volunteered to handle them or do whatever she wanted, and I never heard back a word, until Mr. Heymann showed up, and

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then we started operating again.
Q Was there an acting Associate Attorney General during that interim time period?
A I don't believe there was, because there was nobody to act. We had acting Assistant Attorneys General but since the associate and deputy's office were all political appointees with the exception of me -- there was someone over in the associate's office, but I can't remember if he had any authority or what he did or didn't do.
Q Now, if I'm wrong about this, I apologize. I thought you testified earlier that at some point in February 1993 you had some conversation with someone in Mr. Gersen's office regarding the sending of a recusal package in the Madison case; is that correct?
A That's correct.
Q Who was that?
A I talked -- I recall two conversations. I believe one was with Mr. Gersen himself. It was very short. It was sort of don't call us, we will call you.
Q Was that before or after you sent the

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recusal package?
A I think it was before because my first inclination was this is ministerial, I will just get him to delegate this to me and I will take care of these deputizations and deportations. They are not policy issues. Someone has to sign the line.
It was clear to me that wasn't going to happen. He referred me then if I had questions or information that needed to be brought to his attention to call this guy, this young man who had worked for him as an administrative assistant or executive assistant or counsel to him when he was Assistant Attorney General in the civil division. I did have a conversation with that person.
Q Was that second conversation before or after the recusal package was sent?
A More than likely before, and I don't recall the gist of the conversation. As I recall, it was I'm sending this package, it is going through the criminal division, do you agree I ought to send it through the criminal division.
Q The answer was?

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A Yes, do it like you would have done it, send it to us.
Q This person whose name unfortunately you can't recall was a political appointee working for the acting Attorney General, Stuart Gersen?
A I think he might have been a schedule C down in the civil division. If I saw the phone directory from back then, I could probably recognize his name. He was not a deputy Assistant Attorney General. He was a counsel or assistant to. My perception is that he was political because he left right about the same time Gersen did.
Q In any event, whatever his official capacity was or his technical capacity, he was working in a political capacity for Mr. Gersen?
A He was functioning as Mr. Gersen's assistant for all of his titles.
Q That person advised you that you should send the recusal package through the criminal division; correct?
A I think it was an agreement. I said I have this package, it is a sensitive issue and I don't

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know whether or not -- I told him what it was, but I explained -- he didn't know how these things were handled. I explained what we normally did. I think he just acquiesced and said fine, go ahead and do it the way you normally would, send it to us and that's what I did.

Q Do you know whether this assistant to Mr. Gersen consulted with Mr. Gersen before reaching what you have now described as an agreement with you about the recusal package?

A I think he could have because I think we did it all in that conversation just in a few minutes or so.

MR. KRAVITZ: Off the record.

(Discussion off the record.)

(Recess.)

BY MR. KRAVITZ:

Q Mr. Frazier, you testified that during the period of time, the several months leading up to Mr. Heymann's confirmation as Deputy Attorney General, mail was not being routinely delivered or forwarded to the office of the Deputy Attorney

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General, and that was the period in which you asked to have brought to you the Executive Secretariat daily summaries; correct?

A That's correct.

Q I believe you also testified that you read those or reviewed those summaries every day except when you were not in town.

A Correct.

Q Do you know whether you were in town on March 19, 1993?

A I can't tell you now. There are some things I could refer to. I know that for the last five years the end of March, first part of April I was on two weeks active duty in Japan. I did that five years in a row right about that time frame.

Also, depending on the day of the week it was, I might have been on leave in Florida.

Q Just annual leave?

A Right, or I could have been drilling at headquarters/Marine Corps where my billet was. It would be difficult to know if I was there that day or not. There wasn't anything real important going on

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that mandated my being there.
Q So in other words, you were more likely than at other times in your career to be on leave?
A Yes.
Q If Mr. Keeney's March 19, 1993 memo was routed anywhere through the Executive Secretariat, would the memo be reflected on the summary for March 19th or for some later date?
A It depends on when it went to Exec Sec. It either should have been on the 19th, maybe the day after. When they type their memo and date it, somebody has to be a courier and take it to Exec Sec where it is logged in. That process might take a day. I have no way of knowing.
MR. KRAVITZ: Chip, do we have records from the Executive Secretariat?
MR. GICALE: Is this on the record?
MR. KRAVITZ: It can be on the record.
MR. GICALE: Let's go off the record.
(Discussion off the record.)
BY MR. KRAVITZ:
Q Mr. Frazier, at some point shortly after

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Mr. Heymann's confirmation, mail and other documents again started flowing regularly into the Deputy Attorney General's office; is that correct?
A That's correct.
Q At that time, did the Deputy Attorney General's office receive a pile or a group of documents or materials that had been held in some other location in the interim period while you were awaiting Mr. Heymann's confirmation?
A It is my assumption that that's what happened because one day the lights came back on and my "in" basket was full. In other words, I got a whole stack of things. Mr. Margolis just sort of divided up the first group we got from Cindy Monaco and he said go through these and he went through some also.
Q Did the stack that you received from Mr. Margolis include materials that were dated as far back as March 1993?
A I don't have any independent recollection of any dates.
Q Did they include materials that were dated

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before Mr. Heymann's confirmation?
A I assume they were. Well, I know that some were because I saw there was some correspondence to him before he was confirmed. It was before confirmation that he was getting letters. But I don't recall any specific instances. I don't even recall what else I saw besides the recusal package that Ms. Westbrook did. I had a lot of documents to go through, letters and pending actions and whatnot.
For the most part, we just parceled them out where they should go and then I advised Mr. Margolis what I thought about them and he took them in to Mr. Heymann and they did whatever they did with them.
Q Did you go through all the materials in the stack that Mr. Margolis gave you to deal with?
A I'm sure I did. I don't recall if Mr. Margolis gave it to me or if Ms. Monaco did. She was sort of functioning as Mr. Heymann's executive assistant.
Q Regardless of which particular person gave those materials to you, did you go through all of the

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materials?
A Yes.
Q To your knowledge, did all of this set of materials that arrived shortly after Mr. Heymann's confirmation get reviewed by someone within the office of the Deputy Attorney General?
A To my knowledge, yes. We were making efforts to do that when I left.
Q To your knowledge, no one came across the March 19, 1993 memo from Mr. Keeney relating to the criminal referral in the Madison case?
A I would say no, because the only copy that you have has the Westbrook note on it, and I know how that was generated, and it has my handwriting on it. I would assume that if there was another one, that would have been provided and I would have seen it by now throughout this whole evolution.
Q And the copy that you just referred to with the Westbrook note and your own handwriting was not among these materials that arrived in the Deputy Attorney General's office shortly after Heymann's confirmation; correct?

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A It was, but it is my belief that it came independently at the same time. It came up from Ms. Westbrook, maybe Ms. Henneman. I would even bet she hand-delivered it. It should have gone through Exec Sec.

I should make this point about Exec Sec. Things should have gone through them, but the Assistant Attorney General of the criminal division is right downstairs directly below the deputy who is right below the Attorney General. There is even an elevator that runs between the AG and the Deputy Attorney General. A lot of things went up and down that corridor that didn't go out through the Exec Sec because nobody is going to tell the deputy or the Attorney General you have to control that through Exec Sec. Maybe their correspondence person would say that. But things got passed up and down that didn't go through the control. They should have, but they didn't always.

Q So, is it your belief then that based on all you have seen, read and heard, that Mr. Keeney's March 19, 1993 memo simply did not go through the

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Exec Sec?

A I have to assume that it didn't, because it would have been controlled. You notice the history data sheet, it says "back through." It is supposed to have gone back through Exec Sec. It is in there.

Q It doesn't appear to have gone through.

A Apparently, it didn't. I don't know why. It just didn't.

Q Now, in June of 1993, after the criminal referral and the Keeney memo were brought to your attention by officials in the Executive Office for U.S. Attorneys, you had a discussion with Mr. Keeney about the recusal issue; is that right?

A I don't think -- I don't know if I had a discussion with him or not. I have a like through-a-glass-darkly memory of a discussion, and I can't remember what the substance of it was at all. But I can't say for sure that I did have a conversation with Mr. Keeney about it.

We talked with great regularity during that period of time because I would see something and I would make sure that he knew about it, because things

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were just -- the routing wasn't real good because it was coming in addressed to somebody who is gone or coming in to a new person and we didn't know who that person was. We made efforts to keep the people in the department informed of things that happened to make sure that it got handled and it wouldn't just fall through the cracks.

Q I think you testified earlier that at some point you and Mr. Keeney spoke with each other and agreed that if there was no case --

A That was Mr. Margolis.

Q I apologize for that then.

You spoke with Mr. Margolis about this when?

A It would have been in conjunction with the note. You have seen the exhibit that has his note to me. It would have been after I got that back. I sent it to him when I got it in. He put the note on there, "talk to me about it," and it has a date and we talked about it.

Q So you got it from Ms. Westbrook on June 8, 1993. I'm referring to document 006675, which is a

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June 8, 1993 memo from Ms. Westbrook to Douglas Frazier.

A That's it.

Q You got it from Ms. Westbrook on June 8, 1993?

A They sent it up that day. I might have got it the next day. It says "received 6/9/93," so I'm assuming that is when it came into the deputy's office.

Q You sent it to Mr. Margolis and got the note back from Mr. Margolis on June 9, 1993?

A Correct. I probably talked to him that same day about it.

Q It was at that time that you and Mr. Margolis agreed that if there was no case, then the recusal issue was moot?

A I went in to see him, he said what is going on. I told him that this thing had been languishing for over -- he asked me had I read the package from the criminal division. I hadn't read it thoroughly, but I said yes, I read the recommendation and it looks like it is a declination and they must have

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talked to the district.
Now, in hindsight, he said to me, you haven't read this closely enough because it is not quite as strong as you think it is.
Q What is not quite as strong?
A The declination. And it does contain what I call some weasel words.
Q To your knowledge, was Mr. Margolis referring to -- strike that.
When Mr. Margolis said this is not quite as strong a declination as you apparently think, was he referring to the criminal division memo or to one or more of the letters from Mr. Banks?
A I'm certain he was referring to the criminal division's memo and the cover memo signed by Erganson. And now when I think about it, it was one of those times where we were talking about the same thing, but didn't quite connect. I was thinking about the cover letter from Mr. Erganson. I think Mr. Margolis had read that declination much more closely than I had. I read the recommendation and that sort of ended it for me. I didn't go about

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second guessing the criminal division in those kinds of things; that is not my job.
We talked about the wording, and I recall that we talked a little bit about -- it was sort of standard procedure. The day that the criminal division of the Department of Justice is just absolutely black and white about something I will be shocked and amazed. It gave room for -- it says we would not -- it says we wouldn't not disagree if you decided to decline based on this memo. It leaves room for -- they are not flat out saying we believe it is a declination.
They are saying we wouldn't disagree with the U.S. Attorney if he decided. It is a polite way of deferring to the U.S. Attorney and not being responsible is how I would describe it. It is also the way those things are normally written.
Q It is a polite way of deferring while also making your opinion known?
A It could be a way of deferring because you don't want to be at odds or that you don't want to be accountable. I don't know what was behind this. I

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didn't read it closely enough. I think he was talking more about -- I think he read what they looked at and I hadn't.

Q You think Mr. Margolis read the referral?

A No. I think he read the memorandum.

Q From the criminal division.

A I think he read the scope of it. He had come from being a Deputy Assistant Attorney General in the criminal division while not on the fraud side at all. He might have been used to that standard type of form. He probably read the scope of the review. I was not familiar with seeing those. Today I would read the scope of the review as well as the recommendation.

Q By "scope of review," you are referring to the fact that the fraud section attorney reviewed the referral but not the exhibits; is that right?

A Correct. Like I said, I was under the assumption, and now the wrongful assumption, that there was contact between the district and the criminal division.

Q As an acting United States Attorney either

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in Nevada or the Middle District of Florida, have you ever declined a criminal referral without reading all of the exhibits attached to the referral?

A Me?

Q Yes.

A It is possible if the section in my office who handled it had. As U.S. Attorney, you have lots of things. You are not going to go reinvent the wheel and do everything your assistants do if you trust them. On very sensitive cases, and I did handle one, we declined a criminal case and entered into a civil forfeiture with Blue Cross/Blue Shield in Florida to the tune of $10 million in connection with the civil division of the department.

There was some trepidation in me declining that criminal case, because I was not -- I came into it late and didn't have time and was very uneasy and I read everything I could get my hands on at the time. Most of the time you are going to trust the people you are working with because you believe them.

I found -- I find it strange that you would

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decline a case or recommend a declination or say there is no need for investigation based upon that referral. But I didn't do those as a matter of course. I don't know what the criminal division did as a matter of course. Maybe that's how they did business.

Had it been me or if they had worked for me, they would have looked at the information. You wouldn't just do it that way. It surprises me. Maybe they had so many that that's how they did them. I don't know.

For the life of me, you are depending on sort of a filling out of a standard form to decide whether or not you want to investigate without looking at the underlying documentation supplied by the agency. You sort of do the agency a disservice if you don't look at what they have made the efforts to get. I would assume some of it -- maybe it didn't come from subpoena. I don't know.

Mr. Banks said at least we ought to send the FBI out and do a couple 302s here for crying out loud. How in the world would you recommend declining

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a case that has this sort of sensitivity without at least making some inquiries to determine some of the veracity to support your decision?

Q Were you -- did you have a copy of Mr. Banks's January 27, 1993 letter?

A It went through me because it was attached. I'm sure I read it quickly. I know I discussed what was in it with Ms. Westbrook on one occasion at least.

Q When was that?

A It would have been when we were discussing putting this package and sending it up for recusal decision.

Q That would have been --

A It was the discussion I testified about earlier. While it didn't quite say I am requesting recusal, it said enough that there probably should have been some action.

Q This was in late January, early February 1993; is that right?

A It should have been.

Q At any time after that point and up until

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the point in June when Mr. Margolis sent the memo out to U.S. Attorney's office in Little Rock, did you suggest to anyone that any interviews ought to be conducted by the FBI and any 302s be completed?

A No.

Q When Mr. Margolis suggested to you that it was his opinion that a memo ought to be sent to the U.S. Attorney's office in Little Rock in June 1993 indicating that recusal was moot because there was no case to be investigated, did you suggest that that was premature and that the FBI ought to conduct interviews and complete 302 forms?

A No, I didn't. Like I said earlier, until some time this year, I was under the assumption that there were contacts between the criminal division and the U.S. Attorney's office and that more than just looking at that referral had been done. That was my oversight in reading that memo.

But then again, I was now just there for a while to help Mr. Heymann. There was not a policy or decisionmaker. I wouldn't have viewed it as my responsibility to disagree with the criminal

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division. They handle the investigative part of this. The deputy's office was just looking at the recusal.

It is hard to explain, but you don't create work for yourself. There are plenty of things you could go meddle in that are not your responsibility.

Q To your knowledge, did Mr. Margolis have a copy of Mr. Banks's January 27, 1993 letter as of June 1993?

A I don't know if it was in the package that Deborah put back together or not. If it was, he would have had the opportunity to see it.

Mr. Banks was gone by then, so I don't know if Mr. Margolis looked or read that or what he would have done.

(DOJ Exhibit 006675 identified.)

BY MR. KRAVITZ:

Q Let me show you a package that begins on page 006675 and goes through -- the Bates numbers really get messed up, but it goes through at least 006700. I think you don't need to get anywhere near that far to find the January 27th, 1993 letter from

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Mr. Banks.
(Witness examined the document.)
A Even if it is here, I haven't found it yet. It is in this particular bunch of documents as well as a letter to the SAC in Little Rock and the FBI and some other stuff. I don't know that all of this was put together in a package.
Q For Mr. Margolis.
A For Mr. Margolis. The reconstituted package, I can't say all of this was attached. I just don't recall. I don't remember.
Q We just need to ask him about that.
A Once you get to the criminal division's memo, that's as deep in there as we would have gone. That was what would help make a decision.
Q You saw the memo that Mr. Margolis sent out to the Eastern District of Arkansas, the U.S. Attorney's office?
A I think I helped write it. I may have drafted it and he made corrections to it. We also left in that document if the district had more information or disagreed, this should have come right

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back saying no, wait a minute; that was the fail safe in this. I don't need to worry about the criminal division decisionmaking because the district is also going to be engaged in looking at this. Between the two of them, if there is disagreement, then we have something we need to resolve.
Q This is the memo or a memo that cannot be found as far as you know; is that right?
A That's kind of murky. I have been told by people who I believe have it that they don't have it. I don't know if it is just because they haven't found it in all of the documents that they got. There could just be a miscommunication.
Q Who are those people?
A Well, you told me I couldn't --
MR. GICALE: Off the record.
MR. KRAVITZ: We don't need to go off the record.
MR. SGRO: Can I consult with him a second?
MR. KRAVITZ: Sure.
(Counsel conferred with the witness.)

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MR. SGRO: You can answer the question.
BY MR. KRAVITZ:
Q Let me phrase the question this way. Who is it who has told you that he or she does not have a copy of the June memo from Margolis to the U.S. Attorney's office in Arkansas while you believe that he or she does in fact have a copy?
A This is the best way to answer that. The first assistant in Little Rock, Mr. Johnson, told me in a conference that I attended back in the end of August, I asked him had he ever seen that memo.
Q This is August '93?
A Of this summer, '94.
Q '95.
A Yes. I asked had he ever seen that memo, and he said yes, he had. I said was it supplied to those requesting information from the special counsel's office. He said yes, I know it was in that group of documents.
The reason I asked him had he seen it was because I had been told by either one of the investigators or one of the attorneys for the special

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counsel that they didn't have a copy of that particular document.
Q Is there anyone else who you believe has a copy but who has told you that he does not have a copy?
A No. I don't know what happened or how it got routed. Like I said, I left from there, and I don't know who signed it. I don't know if Mr. Heymann signed it or Mr. Margolis signed it. I don't know what happened to it. I thought perhaps since I was told that they didn't have a copy at special counsel that it didn't ever get sent for some reason.
That's why I asked because we happened to be in this conference together. I asked him if he had seen it. He said yes, he had.
Q Had you ever asked Mr. Margolis whether it was ever sent?
A Yes.
Q What did you learn from him?
A I think he told me he doesn't remember.
Q Have you ever asked Mr. Heymann whether the

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memo was sent?
A No.
Q Have you had any discussions with anyone about whether the memo was sent from the Deputy Attorney General's office to the U.S. Attorney's office in the Eastern District of Arkansas?
A Other than Mr. Margolis and Mr. Johnson, no.
Q For whose signature did you draft the memo?
A I don't recall.
Q And your best recollection of what the memo said is what? At least in the last draft of it that you saw.
A It said, to paraphrase, that attached or enclosed is a review of the case done by the criminal division. Based upon the criminal division's determination that there doesn't appear to be sufficient information to warrant an investigation, we believe that a recusal is not necessary at this time. If you have further information or if you disagree, please feel free to reraise this issue with us and we will take another look at it, but it

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appears to be moot.
Q The recusal issue appears to be moot?
A Yes. It was like a page, as I recall, maybe a little more. It had a little more to it. It gave them some leeway if they didn't agree.
Q Your expectation was that after receiving this memo from the Deputy Attorney General's office, the Eastern District of Arkansas, the U.S. Attorney's office in the Eastern District of Arkansas would issue a declination letter unless it had additional information?
A They would either issue a declination letter or disagree, yes.
Q Disagree --
A Disagree that a declination was appropriate or that they still needed to be recused because there was going to be something ongoing or maybe something happened in the interim. The dates were so far apart from June, from March 19th or whatever the date was that Keeney dated that thing that something else might have happened, and I didn't know but -- I know there was a subsequent referral that was made because

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I read about it in the newspapers.
Q Now, it was your position throughout this entire process that the office -- that the United States Attorney's office in the Eastern District of Arkansas should be recused from this Madison criminal referral regardless of who actually was in the position of United States Attorney; is that correct?
A That still is my opinion, yes.
Q Why is it that you sent -- why was it that you sent the referral back to Little Rock or agreed that the referral should be sent back to Little Rock in June of 1993 for the purpose of a declination letter?
A The referral or the recusal?
Q The recusal package back to -- strike that.
Why was it that you thought that it was better for the U.S. Attorney's office in Little Rock to issue the declination letter than it would be for the U.S. Attorney's office in Little Rock to recuse itself and then have the Justice Department in Washington issue the declination?
A Because they had the memorandum from the

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criminal division. Had there not been that memo from the criminal division that constituted a separate sort of review, what you suggest probably would have been the best way to do it.
Q Isn't a declination of a criminal referral an action on the criminal referral?
A Yes, it is.
Q Isn't it best if any action not be taken on a criminal referral by an official who has a conflict of interest?
A Yes. Mr. Banks was gone. The career person was the interim. What you say has a lot of merit. In hindsight, maybe it would have been better to do that.
Like I said, with the criminal division's detailed memo, it is different than if they were just going to decline it themselves. They were going to rely on somebody else's review. That person is who would have been saying you can decline.
What you said, if you were going to handle this very neatly and go by the numbers, is a more correct way to have done it. Actually, I didn't

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think of it that way until you just said that. It really didn't occur to me that way.

Q Other than your participation in the preparation of this memo from the Deputy Attorney General's office out to Little Rock in June of 1993 did you participate in any conversations or decisionmaking with regard to the criminal referrals, any of the criminal referrals in the Madison case that you haven't told us about?

A No. The only thing I handled was this recusal.

Q You testified that to the best of your memory you never spoke with Webster Hubbell about this criminal referral?

A Not to the best of my memory. I know absolutely unequivocally I never spoke to Webster Hubbell about this referral because I only had one conversation with Mr. Hubbell ever about anything, and that had to do when he brought in Catherine Landreth who was being vetted to be U.S. Attorney in Nevada and turned her over to me because she wanted to meet me because I had been her predecessor. I

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don't think Webster Hubbell knows who in the heck I am.

Q To the best of your knowledge, did Mr. Hubbell have any involvement in any way with the Justice Department's handling of any of the criminal referrals in the Madison case?

A I would have no idea.

Q But you know of no involvement by Mr. Hubbell; is that right?

A I wouldn't have known of any. I have no knowledge of any, nor would I have.

Q Do you know of any influence that any political appointees at the Department of Justice had on the way that the Justice Department handled the criminal referral between January 20, 1993 and the time in June when the Deputy Attorney General's office sent the memo back out to Little Rock?

A I don't know.

Q You don't know of any influence that any political appointee had on the handling during that time period?

A Except for the conversation with

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Mr. Margolis and with the conversations with Ms. Westbrook, I never talked to anybody else about it that I recall, and I don't have any knowledge about it either happening or not happening.

Q To your knowledge, did any official in the Department of Justice instruct anyone to slow down or delay the handling of the criminal referral during the first six months of 1993?

A Not to my knowledge.

Q To your knowledge, did anyone anywhere, whether inside or outside the Department of Justice during that six-month period, first six months of 1993, instruct anyone to delay the handling of the criminal referral in the Madison case?

A Not to my knowledge.

Q Is it your sense that the delays in the handling of that first criminal referral in the Madison case occurred principally as a result of the lack of decisionmakers and the confusion that reigned in the Department of Justice during the first six months of 1993?

A You are mixing the two again. The recusal,

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I don't know. It is very possible that it was just -- that it just sat somewhere and waited. I don't know what happened with the referral or what was going on with the referral. I have no knowledge of what was being done or not done with it or who had cognizance over it or who knew about it. So I don't know.

(DOJ Exhibits 006688 and 006689 identified.)

BY MR. KRAVITZ:

Q I'm going to show you what has been marked as Exhibit Number 006688 and 006689, a two-page letter dated October 16, 1992 with an indication that it was dictated on October 14, '92 from Charles Banks, U.S. Attorney in the Eastern District of Arkansas to Mr. Don Pettus, special agent in charge of the FBI in Little Rock.

Have you seen that letter before?

A I'm sure I have.

Q Was that letter included in the recusal package that you put together in February of 1993?

A I don't know. I don't think so. It

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wouldn't have been -- in hindsight, the way you would operate, this wouldn't have been relevant to the recusal. All you would have had was Mr. Banks' synopsis of why he felt he should be recused and then the legal counsel and EOUSA's recommendation. You wouldn't need this.

Q You mean because Mr. Banks didn't deal with the issue of recusal in that letter?

A This is an agent from Banks to Pettus. This came from one of the urgent reports. Unless he attached it to his letter as supporting documentation, then it would not have probably gone up as part of the package. I can't say that it wasn't attached. I don't know. I don't recall.

(DOJ Exhibit 006686 identified.)

BY MR. KRAVITZ:

Q Let me direct your attention to page 006686, which is the first page of a two-page letter dated January 27, 1993 from Mr. Banks to Donna Henneman at the Executive Office for U.S. Attorneys regarding the RTC referral C004.

And it begins: "Dear Ms. Henneman, this is

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a follow-up to my letter of October 16, 1992 which I believe was previously sent to you. If not, a copy is enclosed."

Let me show that to you and see if that refreshes your memory as to whether the October 16th letter would have been attached to the January 27th letter and therefore part of your package?

A It may have been. I don't recall. That really had no bearing on the issue of recusal. Once I got past this, I believe this office has a conflict of interest, that's all I was interested in. Actually, I felt like I caused this letter to be generated. Maybe I didn't.

Q The January 27th letter?

A Yes. Maybe Mr. Banks did this. I remember having a conversation with Ms. Westbrook saying he needs to request a recusal if he is concerned and give us a package so we can get it done. So I don't know if that letter to Pettus was attached. I don't recall ever reading that letter to Pettus. I may have seen that there was a letter there, but I probably didn't read it. To me it was apparent that

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that office ought to be recused.
This was not a hard decision, in my opinion. That's what I would have recommended strongly. I didn't have to spend a lot of time looking at the documentation. All I wanted was a package that I could get staffed through so we could get this thing handled and done. I felt that office ought to be off the hook. It was a bad place for them to be.
MR. KRAVITZ: Thanks. That's all I have.
EXAMINATION
BY MR. GICALE:
Q You indicated that you did not know what was happening with respect to the criminal referral. There was a two-part question. You said you knew what was happening with respect to recusal, you weren't sure what the reasons for the delay were; correct?
A I knew that I had sent the recusal. I knew that I had sent it to Gersen via Mr. Keeney. I didn't know where it went.
Q You did not know what was causing the delay

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in that decisionmaking?
A No. I had assumptions, but they probably weren't correct. I assumed that it was in the criminal division and they were having a hard time figuring out who was going to get involved in this thing. That turns out to have been incorrect because they wrote a memo on the 19th of March and the thing -- and there was a declination recommendation.
Q The other thing you said was that you did not know what was happening with respect to the criminal referral when asked.
A Correct. I had no idea what was going on with the referral.
Q But was it your impression that Banks's office was waiting for a decision on this recusal issue before they were prepared to move ahead on the referral?
A Yes. Well, I don't know that I thought of it that way. I knew that I thought the thing should be taken from the district. I knew Mr. Banks was gone, and he was the Republican U.S. Attorney.
This plays both ways. During the time of

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the election, for a Republican United States Attorney to have announced that he was investigating the candidate for the presidency has all sorts of implications, the politics of the thing.

As he is lame duck, maybe the same thing. I also recognized that the new U.S. Attorney was going to be Democratic and from Arkansas and therefore it also has another set of political ramifications. I was assuming that the department through the special counsel, the interagency bank fraud working group and the criminal division, was involved in this case and was doing something with it, consulting with the district.

It just didn't occur to me that what happened happened. I wasn't smart enough to figure out that that was going on.

I thought that there was contact between the criminal division and the district. I looked at it this way. Since there was nothing going on when Banks wrote his letter, it would have been early on in the whole thing. If they were still involved, they would have been looking with documents and maybe

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working with the RTC to issue some subpoenas.

Q That's what you thought at the time.

A Yes.

Q Now having looked at the paperwork --

A That wasn't going on.

Q And --

A Evidently nothing was going on.

Q Would it be your position based on your review of this and your experience as to what was going on then that it was awaiting the decisionmaking and the recusal? They were awaiting the decision on the recusal?

A I don't know what they were doing. I don't know if Ms. Westbrook had contact with the district and they were asking her what was happening. I am now aware that RTC was asking Ms. Henneman. But I don't know.

My point, when Mr. Gersen basically told me don't call us, we will call you, it was readily apparent to me what my role was going to be. I was going to sit around and wait for a new Deputy Attorney General to come and tell me to go home. I

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had written a letter to Ms. Reno and had gotten no response and really that didn't surprise me. They were really very, very busy.

I didn't view it as my responsibility when the criminal division was aware of this and had an acting special counsel and had a fraud section and was in on the bank fraud working group and should have been talking to the regulators. I didn't view as my responsibility to make a decision one way or the other or to wonder about it.

When Ms. Westbrook would ask me where it is, I said I don't have a clue, ask Mr. Moscato, he goes to the meetings with the Attorney General. I don't.

Q Who was the acting special counsel?

A Allen Carver, I believe.

Q He took over from Raphaelson?

A That was my understanding. I know that because I asked Mr. Raphaelson the last day he was at the department who was going to be the special counsel and he said Allen is going to handle that stuff.

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Q Now, to go back to your conversation with Mr. Margolis when you discussed the memorandum. Once again in June, you said that Margolis said something to the -- said something like this memorandum from the criminal division is not quite as strong a declination as you think it is.

A He probably said it in not quite those polite terms. It probably was something like it is not as clear as you think it is, and I probably said something like you mean they weaseled on the thing, and he probably said yes. That's how the conversation would have gone.

In hindsight, you would have to ask Mr. Margolis because I don't think I have ever asked him that question. He was looking at it from one perspective and I was looking at it from another and we were not in synch on that particular issue.

I think that he looked at the recusal package closer, the declination memo more closely than I did. I was looking at Keeney's famous we wouldn't disagree if the U.S. Attorney wanted to decline paragraph.

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So, I don't know.
Q How long was your conversation with Margolis on this?
A Maybe 90 seconds. We both -- it was one of those things that we both had come to the same conclusion that it is moot; if there is no case, there is no need for recusal. Now it has been pointed out that wouldn't it have been better -- and I agree it would have been better to have done it differently now that I think of it. We didn't think of it at the time. There was lots going on, lots of correspondence to catch up on. I was sort of at a blind spot. If there is no case, no need to be recused.
Q Your recommendation to him was based on certain assumptions with respect to the work that you thought had been done?
A Yes. It was based on the assumption the criminal division was correct, there was insufficient information for investigation.
Q And had some contact with the district?
A That was -- I don't know if Mr. Margolis

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thought that or not. I recall as part of the conversation I said something to the effect that obviously they must have been talking to the district. I don't know if David heard it or responded in any way. That was my assumption, which evidently was incorrect.
Q You mentioned the name Cindy Monaco who came in with Mr. Margolis?
A Cynthia Monaco, yes.
Q Would she have been the one that suddenly appeared with Mr. Heymann and Margolis with this big stack of documents?
A Mr. Margolis came after Mr. Heymann arrived. Cynthia Monaco came with Mr. Heymann from day 1 as I recall. She had been clerking for a court of appeals judge in New York and had worked for him at Harvard law school. She came with him right from the very beginning because she had functioned as an assistant at Harvard for some period of time as a law student. She came with him to be his executive assistant, to handle correspondence and phone calls and scheduling and all that sort of thing from the

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very beginning.
Q My purpose --
A David didn't come -- it was pretty close in time to Mr. Heymann's arrival before he came upstairs. She was there first.
Q Would she have been the one that would have received this big stack of information and letters in the beginning when Mr. Heymann came in the office and therefore the one who could tell us where this information had been sitting prior to that time?
A I think so, because her office was next to mine and she had just tons of stuff. But by then we also had some support people back in the deputy's office who had been in the deputy's office, secretaries who knew how to route certain things. It may have come from Exec Sec in four boxes and they may have said, okay, boys, go back the work, and given stuff to me and David as it arrived because we would screen things.
It occurs to me Ms. Monaco and Mr. Heymann were looking mostly at the early mail especially early on because he was having a hands-off thing on

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the deputy's office because he wasn't confirmed. He was just nominated.
So, I don't know how I got what I got or where it came from. I know that there is a deputy and all of a sudden we had correspondence again.
Q Are there other secretaries or principal secretaries in that area that would know about that?
A There were several. I don't know who is still up there. There was my secretary.
Q What was her name?
A You are going to ask me that and I am going to feel like an idiot. She is not there anymore. She went to another agency. Boy. That is bad. Betty White was there.
My other secretary -- there was two. One was named Evelyn. Evelyn went upstairs to the AG's office. She is still there. There was a woman in JMD that was out front. I mean out in the main entrance to where the deputy's office was.
I cannot recall those three ladies' names right now. They were there when Mr. Heymann came in. One was kind of the office manager. She would

be the one to ask. I can't recall her name. She may be up in the AG's office.

Q I just would ask if you could find out the names of those people and give them to chip.

THE WITNESS: Is it okay if I give it to you?

MR. SGRO: Sure.

THE WITNESS: It is bad not to remember the names. It has been water under the dam.

MR. GICALE: I have nothing further.

MR. KRAVITZ: Thank you.

(Whereupon, at 1:00 p.m., the deposition was concluded.)

CERTIFICATE OF NOTARY PUBLIC & REPORTER 154

I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Brenda Smonskey
Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 14, 1996

U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

October 11, 1995

Mr. Robert Giuffra, Chief Counsel
Mr. Lance Cole, Democratic Deputy Special Counsel
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, D.C. 20510-6075

Dear Messrs. Giuffra and Cole:

Pursuant to your request, enclosed is the deposition transcript for Doug Frazier dated September 18, 1995. Mr. Frazier was deposed by the House Committee on Banking and Financial Services as part of that Committee's investigation into Madison Guaranty Savings and Loan and related matters.

Please note that the enclosed transcript was received by the Department on October 11, 1995, at approximately 11:00 a.m. and has not yet been review by Mr. Frazier for accuracy. The Department is producing this transcript prior to Mr. Frazier's review because of the Committee's request to have this transcript immediately.

If you have any questions, do not hesitate to contact me.

Sincerely,

Charles J. Sgro
Counsel to the
Deputy Attorney General

cc: Stephen Kubiatowski

RPTS McCALLEY

DCMN MAYER

COMMITTEE ON BANKING AND FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

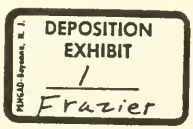
WASHINGTON, D.C.

In the matter of:	
MADISON GUARANTY SAVINGS & LOAN	DEPOSITION OF DOUGLAS FRAZIER

Monday, September 18, 1995

Washington, D.C.

The deposition in the above matter was held in Room 714, O'Neill House Office Building, commencing at 12:15 p.m.



Appearances:

Staff Present for the Banking and Financial Services Committee: Thomas Clark, Senior Counsel.

For U.S. Department of Justice:

CHARLES "SKIP" SGRO, ESQ.
U.S. Department of Justice
Tenth and Constitution Avenue, N.W.
Washington, D.C. 20530

WHEREUPON,

DOUGLAS FRAZIER,

a witness in the above-entitled matter, was called as a witness, and having been first duly sworn or affirmed to tell the truth, the whole truth, and nothing but the truth, was examined and did testify as follows:

Q Good afternoon, Mr. Frazier. My name is Tom Clark. I am Senior Counsel to the Committee on Banking and Financial Services. I appreciate your coming here today, especially since you came in from out of town. The record should reflect that Angie Garcia, the Minority staff, is not present. She has apprised us that she will not be attending today.

As you know, the committee is investigating the failure and resolution of Madison Guaranty Savings & Loan Association, and related matters including the executive branch's handling of Madison Guaranty. Most of my questions will be related to that area. After I've -- excuse me. I will have some questions for you and I will probably show you some documents. After I finish, if he cares to, Mr. Sgro, on behalf of the Department, may ask you some questions.

This deposition is not governed by the Federal Rules of Civil Procedure, but objections may be made for the record. If an objection is made, the question will either be withdrawn, recast or allowed to stand in the discretion of the questioners. If there is an instruction not to answer a

question and the instruction is followed, I will determine if the deposition is to proceed or if a recess must be called to obtain the Chairman's instructions, if any. In the spirit of cooperation, however, the committee hopes to avoid reaching that point and we haven't gotten to that point yet.

I don't expect we will take very long, but if at any point you feel you want to take a break, just say so. If you don't understand my question, just say so and I will rephrase it.

A Okay.

Q Okay. The first thing I want to show you is a document that to my understanding -- it was provided by the Department. It is my understanding it was culled from your employment records and we will mark it for identification as DNF-1. And I'd ask you to just briefly review it and tell me if there are any changes that you would like to make to it.

A I reviewed this one day last week; a copy was faxed to me from the executive office for U.S. attorneys, and I have reviewed it. It is basically just my biography, with a few things added.

Q Okay. And it's -- for the most part, it's accurate as to approximate dates and descriptions?

A Yes.

Q Of various positions?

A Yes, it is.

Q At various times, you have worked within the executive office for U.S. attorneys?

A Yes, I have.

Q And can you just describe the different positions you have held within that office and the tasks that you have been responsible for in the various positions.

A In August of 1990, I came up to Washington on detail to work in the new area of the executive office that was called Priority Programs and I was the first person to work in the Priority Programs. The Priority Programs team was established and was a part of the evaluation and review staff of the executive office for U.S. attorneys, and its purpose at that time was to assist the Department in the savings and loan bank fraud crisis that was ongoing in the form of helping to collect information that could be provided to Congress and to the field and to act in a liaison capacity between the field, the Department leadership and entities that wanted or requested information from us, "us" meaning the Department of Justice or the U.S. attorneys.

Q Was it -- was that position merely an information-gathering position or was it also a position from which you gave advice or conducted training seminars?

A Both. The major focus and function became information collection, but at the beginning, the Special Counsel for Insti -- for Financial Institution Fraud, the

first one was Jim Richmond, who had been United States attorney in the Northern District of Indiana, and he had no staff, and his successor, Ira Raphaelson, had no staff, so myself and Kathy Kahoe served as staff to the Special Counsel. So we did have some role in developing training. We had some role in giving some advice to the Special Counsel, but the major function was, we developed a computerized tracking system that was different from the one used by the Department of Justice and U.S. attorneys to track S&L and bank fraud to provide specific information to the Congress on a -- I think quarterly basis.

Q Okay, the ordinary system is referred to as promise, I think?

A Depends on the district. There are actually four different systems depending on when that district came on line.

Q Okay. This separate system that was used to provide quarterly information, can you just say, can you just describe some of the general types of information?

A Sure.

Q That was compiled?

A It was an Oracle database, and the reason we did this is, we got asked for lots of information in different forms. So we went to the districts and they actually manually filled out fields on a form and then sent the forms to

Washington and there they were coded in or actually keystroked into the database. But it was a database that tracked from indictment, or in some cases, information filed. So when a case was filed, it tracked the names of the defendants, the charges, the amount of loss or fraud suspected, whether or not the person charged was an insider -- that is, if they were an officer or employee of the institution, whether they were attorneys. There were a set of sort of definitions that we developed that allowed us to come up with that.

And of course as the case was disposed of, the sentence and restitution and that sort of stuff was, or information was kept in this database. It allowed us then, if someone wanted to know the number of bank vice presidents or CEOs that had been indicted, you could ask the computer that; and then it also, we used it to generate the quarterly reports that are still given to Congress.

Q Okay, and that was information that was accumulated from all the U.S. attorneys' offices?

A Yes.

Q Throughout the U.S.?

A Yes.

Q And did you have a separate stint in the executive office for U.S. attorneys prior to your present --

A Yes.

Q -- present position?

A After a while -- and I can't remember the dates, but the Gulf War happened, and I was in the reserves, as was the principal Deputy Director, Wayne Rich, and he flipped a coin and decided that he would go on active duty. So he went out to -- on active duty during the war. He got mobilized and was on the West Coast and I became the Deputy Director of the executive office. Larry -- Lawrence MacWhorter was the Director. I became the Deputy. And that would have been at the end of '90, first part of '91, and I think that it's on here.

Q You have of?

A Yeah, Deputy Director from '91, January of '91 for about a year. When Mr. Rich returned from active duty, Mr. MacWhorter decided to keep two Deputy Directors, and I became the other Deputy and had some responsibility for parts of the executive office for United States attorneys.

Q Okay. During that period of time, did Deborah Westbrook work in the executive office?

A Yes. She actually was hired during that period of time, as I recall.

Q And how about Tony Moscato?

A No. Lawrence MacWhorter was the Deputy Director -- or was the Director. I left in the spring of '92 and went to Miami and was interim -- I was first assistant down there during an interim period, then went to Nevada and was the

interim United States attorney, and then came back in October of '92 to Washington to the Deputy Attorney General's office. And it was subsequent to that time that Tony Moscato was named the acting Director of EOUSA. I think November or December of '92.

Q Now, on the exhibit compiled by the Department it says that presently you are an Assistant Director for the Evaluation and Review Program --

A Yes.

Q -- of the EOUSA.

A Yes.

Q And that entails going out and looking at the various U.S. attorney's offices and evaluating their performance?

A It is the formalized method of -- that's mandated by the statutes enabling the executive office to report through the Attorney General to Congress on the use of the resources given to the U.S. attorneys. It is a formalized evaluation process that looks at the legal management of U.S. attorneys' offices, the administrative operations, the financial litigation units and the personnel management. It functions as the internal controls mechanism for the executive office for United States attorneys.

We do a week-long evaluation. The evaluators are peers. That is, they are assistant U.S. attorneys who are generally

supervisors in their districts, senior administrative and support personnel and financial litigation folks who are put together in teams based on the demographics of the district, based on the size of the district and the types of programs that are ongoing there, and we go to every district about once every three years, so we do about 33 of those a year.

Q Okay. Is there any mechanism for evaluating and reviewing the executive office for U.S. attorneys itself?

A Yes, there is. And in fact I am also tasked with that responsibility. I think we did four of the sections of the office this year and Ms. DiBattiste, who is the director, wants me to do the rest of the office in fiscal year '97, depending on budget.

Q Can you describe when you first became aware that there was an investigative matter that -- or in which the names of either Bill or Hillary Clinton arose?

A Shortly after I came back to Washington and joined the Deputy's office, I got a copy of an urgent report in my in-box, and it was or had to do with some information concerning the possibility that the then-candidate Clinton and his wife might be witnesses in some sort of an S&L case that was in Arkansas. I don't know the exact date.

I briefly went into to my boss who was the Deputy Attorney General George Terwilliger and found out that he knew about it -- it was very close in time to the election -- and

satisfied myself that the Department leadership, those who would do something with it, knew, and that was it at that time.

Q Okay.

A That's the first.

Q In other words, you at that time were not asked to do anything to follow up --

A No --

Q -- on this situation?

A And wouldn't have been.

Q And when did Mr. Terwilliger leave the position?

A I think the day before the inauguration.

Q So in January of '93?

A Yes.

Q And at that point, did your job title change?

A Mr. Terwilliger designated me to stay behind, as it were, for purposes of transition and reestablishing the Deputy Attorney General's office, whenever that occurred. He gave me a letter asking me to do that. Since I had career status and was never -- although most say Associate Deputy Attorney Generals are political appointees, I wasn't, and that is why the term "acting," I suppose. I agreed to stay and basically was there in the office for the most part until Phil Heymann came in to be the Deputy Attorney General.

Q Okay.

A But I was not -- was not the acting Deputy Attorney General. In fact, there was no Deputy Attorney General's office because Mr. Gerson, who had been designated to stay behind as the acting Attorney General, became the Attorney General, the Deputy Attorney General Associate and Assistant Attorney General for the Civil Division. He had all four of those titles from the inauguration until he left in -- I guess upon Ms. Reno's appointment in March.

Q Was Mr. Gerson the person that you were reporting to before Ms. Keno -- Reno came aboard?

A To the extent that I reported to anyone during that time, yes.

Q And then once Ms. Reno came aboard, did she precede Mr. Heymann?

A Yes.

Q Okay. Were you reporting directly to her or to someone else, if at all?

A I didn't really report to anyone until Mr. Heymann came aboard. I had some limited contact with various people. Most of what I did in that time frame was to -- Tony Moscato, who was the Director of the executive office, was new. He had not been in the U.S. attorney's office or in the executive office before, and I had -- did my best to assist him in different things that were ongoing issues in EOUSA, and I also processed some asylum and deportation issues.

If you will recall, there were a number of Haitians and Cubans who were down at Guantanamo, and some of them were HIV and needed medical care, and that wasn't possible there, so we were getting requests from the military through INS. There was a man by the name of John Andre, who had been detailed from INS, who had worked in the Deputy Attorney General's office as the attorney handling that, and we continued to put the packages together and then sends them to whoever was the acting Deputy Attorney General. That was Mr. Gerson until he departed, and then after that, we sent them -- I can't remember if they went to Mr. Hubbell or Ms. Reno.

But I -- shortly after Ms. Reno's coming aboard, we didn't do that, John Andre went to work for someone else that was handling those issues that had sort of the INS package, I guess they call it, in the transition group.

Q Okay. After -- well, withdrawn.

During the period of the transition from the Bush administration to the Clinton administration, were you still receiving recusal requests on various matters?

A The only -- I only recall one, and that is why we are here, I am sure.

Q I mean, is it your recollection that this is something that you hadn't seen in a while or was it in a pile of recusal requests or --

A No. I caused it to be generated. I think that -- I

think that conversations I had with Deborah Westbrook, who was legal counsel for EOUSA, and Tony Moscato caused it to be generated. At some time after the urgent report, I had -- and I don't know if this was in the fall or after Christmas, I had conversations with Ms. Westbrook and with Tony Moscato about the issue of this investigation in Arkansas. I was aware that there had been correspondence and communication with Chuck Banks, who was the U.S. attorney with Deborah and perhaps with Tony Moscato, also. And I recall conversations about the substance of -- of the communication and I recall suggesting that what they ought to do is treat those communications as a request for a recusal.

I don't know if this was, like I said, early on or not. It was not my responsibility, really wasn't my function. I was acting more as someone who had been in EOUSA and just as someone giving legal advice, but it seemed to me that that was appropriate based on the communications that they had received that they ought to have the United States attorney seek recusal, and if his requests were not specifically seeking recusal, they could still use that information to generate a recusal package and send it up to the -- at that time, the Deputy Attorney General decided recusals. When I say "decided," decided if there would be a recusal and who would be standing in place of the United States attorney who was recused.

Q Okay. Was there anyone that you consulted in making or arriving at the decision that you should cause this to be created?

A No. It was a conversation and it was my suggestion to the executive office that there ought to be a recusal in the specific instance based on what I had been told. I never talked to Mr. Banks and I don't recall if I read much of anything. I may have read a letter that he sent at some juncture. But it seemed to me, based on what was going on, that a recusal seemed to be in order because of the fact that this was a case arising in Arkansas where the then President-elect resided and had been Governor.

In a small State, and all those sorts of things, there obviously was going to be the appearance of conflicts, and I think Mr. Banks was uncomfortable with trying to handle what was going on, also.

Q Was this an issue that you had dealt with personally prior to this instance?

A Yes. We -- the recusal policy was -- in the Department with the U.S. attorney's office was changed while I was there as a result of a couple of cases that became difficult. The Deputy Attorney General asked and we redrafted the policy to have the Deputy Attorney General approve recusals. And there were some good reasons for that.

We basically had a case or two where because of everybody

falling out because of some sort of on conflict that we had a line attorney handling a very sensitive case and reporting to only one person before the Attorney General. And that wasn't a good thing; and Mr. Terwilliger decided that we should revisit this policy. And so we did and we started doing recusal packages that came up to the Deputy's office.

They would come to the Deputy Attorney General's office. We would look at them briefly -- and by then I was handling them -- and would normally send to it the Criminal Division to get their recommendation as to who should handle the case, that is, should it go to another district, maybe stay in the district, or should it be handled by some part of the Department of Justice? The main reason to send to it the Criminal Division was to determine whether or not they thought they should have one of their sections handle it.

Q And the institution of this policy predated the matter involving Mr. Banks and --

A Yes. Yes, it did. But we had not done many. There had been -- there had been few.

It was -- this was in the end days of the administration, and we really hadn't done many of these. There were a few. We had talked about doing it, had made the policy.

Q I am going to show you a package of documents that have been stapled together, and I'll identify them for the record by their Bates stamp numbers; 006683 is the first page

of the first document, and the last page should be 006717.

A Okay.

Q And what this should include is a memorandum to John Keeney from yourself dated February 18th; a memorandum from Anthony Moscato to Stuart Gerson, dated February 9th of 1993, which is marked through Douglas Frazier.

Underneath that, a two-page letter from Charles Banks to Donna Henneman, dated January 27th, 1993. Underneath that, a two-page letter from Charles Banks to Don Pettus of the FBI, dated October 16, 1992 -- there are actually two copies of that letter; copies of two separate urgent reports concerning this investigation, one dated October 20th, 1992, the other dated October 7, 1992; a September 1, 1992 letter from Richard Iorio, I-O-R-I-O, to Charles Banks, and a criminal referral from the Resolution Trust Corporation that is approximately 20, 21 or 22 pages.

And then the last three pages are forms, all bearing the heading Department of Justice Executive Secretary Control Data Sheet. The February 9, 1993 memo.

A Yes.

Q Did you have any discussions with anyone in EOUSA concerning what should be included in the text of this memo to Mr. Gerson?

A I don't believe so. It's possible, but I have no recollection of that. I knew that Banks felt that he should

be recused and it appeared to me that that was a good idea. Like I said, it is my impression that this was generated as a result of me saying, well, just treat it as a recusal --

Q Okay.

A -- and send it up and we will get it taken care of.

Q Okay. If you look at the next two pages, which on my copy, at least, don't have a Bates stamp, but it's Mr. Banks' January 27, 1993 letter to Donna Henneman. Take a moment to read it to yourself.

A Okay, I have reviewed it.

Q Is this the letter that -- withdrawn.

Did you have a discussion with anyone in EOUSA about this specific letter before receiving the memorandum for Stu Gerson?

A More than likely. It refers to this and only a letter of October 16, so I am assuming that this is the letter that was being referenced when I talked to Deborah and to Tony Moscato. And it seems to me that it took a while for this letter to be generated by Mr. Banks, and -- I don't recall all the particulars. But my memory is that we thought there ought to be a recusal or something done, and then it took a while for this letter to come in. But I don't remember.

I have seen this letter before and read it very quickly.

Q Did you ask anyone from EOUSA to call Mr. Banks at any point after the election in November to suggest that he

submit such a letter?

A I don't know -- I don't know that it would have been put that way. I think I suggested that they get a recusal from him based on what he had said. My memory is that something came in. They had information that didn't really -- it didn't say "recusal" on it, but in essence that's what it was asking for -- is that a determination as to recusal of the district be made, although there is really, according to Mr. Banks, there is no real investigation; he says there ought to be an investigation and that sort of stuff.

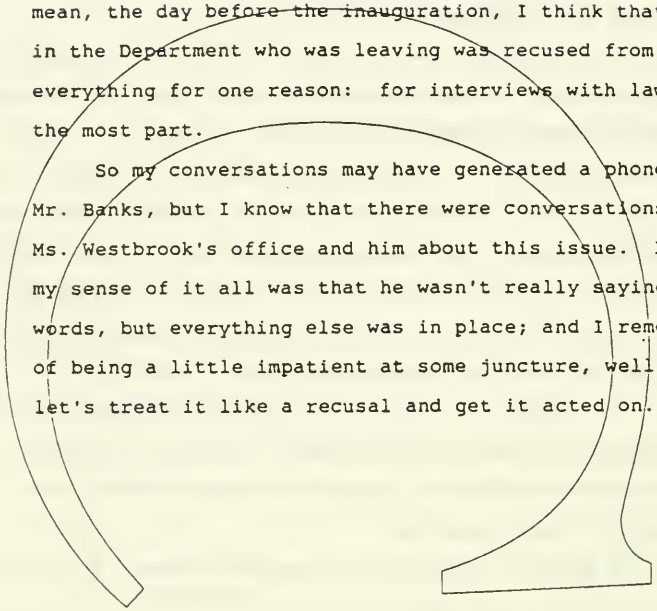
So I mean, the idea here is that the district should most likely be recused and from there, more than likely, the Department of Justice's Criminal Division would handle it. And that was my mind-set.

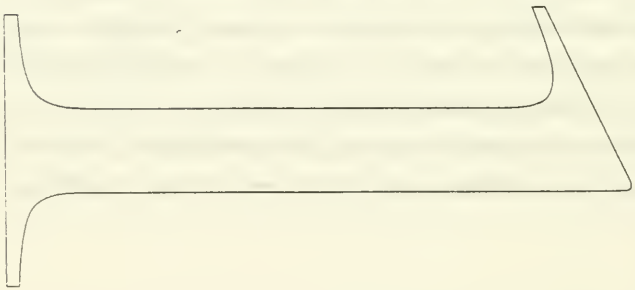
I didn't -- to this day, don't know much of any of the particulars of the case at all, because that was not anything I would deal with. The referral is the Criminal Division and Special Counsel; and the recusal, the Deputy would have made the decision.

You know, prior to the inauguration, I may well have signed the decision, whatever it would have been, had it gotten to me by then, but it didn't. And the timing is sort of -- a lot of things were going on then. I mean, people were closing down and, you know, files were being provided and people were being recused from everything. By the time -- I

mean, the day before the inauguration, I think that everybody in the Department who was leaving was recused from just about everything for one reason: for interviews with law firms for the most part.

So my conversations may have generated a phone call to Mr. Banks, but I know that there were conversations between Ms. Westbrook's office and him about this issue. Like I said, my sense of it all was that he wasn't really saying the magic words, but everything else was in place; and I remember sort of being a little impatient at some juncture, well, then, let's treat it like a recusal and get it acted on.





RPTS MCCALLEY
DCMN GALLACHER

Q Okay.

A But I can't remember when that would have been, and the issue of how long it took between perhaps that conversation and getting this, I don't know because it wasn't anything of importance because they were dealing with the issue and that was their responsibility.

Q Was it your opinion that the matter should be recused from that office regardless whether Mr. Banks was the U.S. attorney or was it based on factors that were unique to him?

A My decision would have been based upon the fact that it was that office regardless of who was U.S. attorney and there would be an interim as soon as he was gone and who knew how long it would be before a then democratic person -- and I assume, I mean, my thought processes are this: I didn't have conversations, but I would assume that any U.S. attorney in Arkansas would have known the President to some extent. A small State, in a political position, that would just be my assumption, at least they would have things in common. You know, perhaps had this been Los Angeles that was investigating this, then maybe I would have had a different thought process. But from the very beginning it was my opinion this didn't need to be in the eastern district of Arkansas.

Q Okay. Once, however, Mr. Clinton was elected, did you weigh whether bringing the matter into main Justice as opposed to having a different U.S. attorney's office handle it might generate some of the same questions regarding the appearance?

A No. And I didn't get to that point. The point we got to was asking the Criminal Division for their opinion and that -- that was the point. I mean, I really didn't sit around and think about it. I sort of did my job day to day based upon whatever was generated in front of me and didn't try to make things happen that didn't have to. When it came, the next step once this was actually referred up to the Deputy's office, the next step was to get it through the Criminal Division to the decision maker who at least when we got this package, was Stuart Gerson.

Q Okay. And so that is the --

A And if somebody had asked me my opinion, I might have told them. But nobody asked.

Q So that is the purpose for your February 18th memo to Mr. Keeney.

A Yes.

Q Which is the first page.

A This was standard practice, was that we would send this to the Criminal Division to get their ideas as to where it would be and then the Deputy could -- or whoever was the

acting deputy could agree or disagree with them because that was the decision maker but we always got the Criminal Division's input.

Q The text of this memorandum from you to Mr. Keeney really consists of just two sentences: Did you have any conversation with Mr. Keeney before sending this memo to say I am going to be sending this to you or did you discuss it at all?

A I don't recall. It's possible. I talked to Mr. Keeney maybe every other day during that time for a lot of different reasons. One is I used to have lunch with him occasionally. But there were a lot of transition things were going on. Basically, all I was doing in the Deputy's office is there is a light bulb on and I was sitting in there with the lamp shade. I had no power. I wasn't -- had no authority to do anything. But some things came to me. Most of what came to me was the highly classified stuff. I had all of the clearances, including code word and so -- I mean, the security people upstairs knew I had the security clearances so I got asked to go to a meeting or two and started getting some documents.

I had conversations with Mr. Keeney about who was more appropriately going to handle this and it was decided that Mark Richard would do it; it was his role in the Criminal Division. And then I determined by asking people that John

Rogovin, who had come in with the transition people in the Attorney General's office was going to handle that part of the package. And so I started funneling these documents or sending them up to Mr. Rogovin and it wasn't long before I didn't get anymore.

The other thing I did was I got what is known as the exec sec summaries. What it was was the last two pages of this document. Those are those what you referred to as the control data sheets.

Q Yes, sir.

A Those would come out every day. The attachments wouldn't be there but you would get a sheet of these that were going to the leadership of the Department and it would say on there who -- who would get this. It was a very limited number of people in the Department and I suggested and had my secretary convince -- I think the exec secretary that that was -- it a was good idea for me to see that because there were still things going on that I might have information about, and in one occasion I noticed that somebody was writing in to get an appointment with the Attorney General and I sent a little memo up notifying her that that person was under investigation in the district where I had been U.S. attorney. I knew about it and suggested she could get further information before making -- maybe she wanted to have the meeting or what not.

25

But it was that kind of stuff, to stop or help, sort of help the process. But that's -- that and processing the deportation issues, that was about it.

Q Now, with regard to the executive secretary sheets, when you say you received them every day, do you mean that you got them as they were being generated or while they were open; did you get the same sheets day after day?

A No. You would get a package every day and it probably was the ones opened from the day before. And there was a list of who they went to. I think Jack Keeney was on it, I was on it, back then probably a lot of the transition people. And like I said, a lot of times you wouldn't have a clue what it was just from reading the summary because the documents weren't there. But I was basically looking for names or issues so that I could alert people upstairs that something had gone on about that, perhaps.

Q At that time, did you have any sort of tickler system to remind yourself that this matter had been referred to Mr. Keeney?

A The exec sec had it. They had the overdues, they would call it. They would send you a list of the overdue correspondence and it would keep coming to you until you answered it.

Q You say it would come to you in this instance where you sent a memo to Mr. Keeney. Would it come to you or Mr.

Keeney or both?

A It would have come, depending on the routing -- wouldn't have come to me because I didn't have any action pending. It would go to the person who was assigned for action. So if you look at the last one here, it says, this was referred to the Deputy Attorney General Keeney -- or Frazier, Keeney criminal, interim signature for acting assistant -- Acting Attorney General. Remarks, for ODAG to initial on through line return through exec sec to Keeney. So in this case, you know, it was to go to the Attorney General. So it would have been the Attorney General, would have gotten the overdue on it.

Q Okay.

A Or -- see, there are no dates. Since there is no due dates from DAG or Keeney, and I generated the thing so it wouldn't have come to me. I knew the thing was pending because it became sort of a -- one of those things that got asked about by -- from either Deborah Westbrook or Donna Henneman with some degree of regularity, what happened to the package, what happened to the package, and I would go, I sent to it the Criminal Division and that's all I know.

Q Just so the record is clear, for the past couple of minutes Mr. Frazier has been referring to document 006717. Is that accurate or were you referring to a different page?

A No, that's the one I was talking, the last one

6717.

Q That is the very last one?

A Yes.

Q Is that right?

A Yes.

Q Okay. In the time period immediately after you sent this package to Mr. Keeney, did he call you back to discuss it?

A I don't believe so.

Q Now, in the early months of the administration, was Mr. Hubbell involved at all in the approval process on recusals that you recall?

A I don't know. I don't know if any were done, some were done or none were done. I don't even know if -- EOUSA would have the list and would be the ones who generated them, legal counsel, but this is the only one I recall seeing during that period of time. It's possible another one came through; I would have done the same thing. I would have routed it through the Criminal Division to whoever.

Q When did you next have occasion to be involved with this investigation, if any?

A I never was involved with the investigation. I know that legal counsel continued to ask me with some degree of regularity over time what happened, what happened, where is it, and I would respond, I sent to it the Criminal Division, I

don't know; you know, they are obviously not interested in having me do these and they are not asking my opinion on them, and it sort of was my idea or the way I acted was if they wanted to know something, they would come ask me. Eventually Mr. Heymann showed up and the Deputy's office became the Deputy's office again and correspondence began to show up and there was a lot of correspondence. Obviously, they kept letters and correspondence someplace waiting for Mr. Heymann to come in and this issue came back up again.

I think that what happened was I'd had a discussion with Deborah and she told me the Criminal Division had in fact forwarded the package and I said, well, I haven't seen it, can you regenerate whatever it was and we'll get the thing acted on now that Mr. Heymann's here. Actually, David Margolis had come up and was in the Deputy's office with me and in fact she regenerate a package and we took some action on it.

Her regeneration of the package included providing me with the Criminal Division's memorandum on declination. And I do recall her telling me that she had something or had seen something and I said, well, get what you have got together and resubmit it, and we'll see what we can figure out.

Q Okay. When had Mr. Margolis started in the Deputy's office?

A He came up within a day or two of Mr. Heymann coming aboard. Brought him up from the Criminal Division.

Q Okay. Had you known Mr. Margolis?
A Yes.
Q Prior to this time?
A Sure.
Q Are you familiar with Donna Henneman?
A Yes.
Q And can you just identify how you know her?
A She was one of the support people in the legal counsel's office in the Executive Office for United States Attorneys, and she was -- she did something with ethics. She used to give ethics or handled ethics issues, so I imagine that she must -- at that time she was handling the recusal things. I think maybe she prepared the packages.
Q Did you have any conversations with her in this period where people were asking you --
A Yes.
Q -- what had happened?
A Yes. And I -- it seems to me I probably talked to -- Donna probably asked me more often. It was obvious she had a tickler system so she probably asked me more often than Deborah or Tony did about it.
Q I am going to show you, now it is a couple of different documents but they are stapled together. I am not representing that that is the way they were originally but they are Bates stamped 006675 through and including 006682.

A I've seen these documents.

Q Okay. And when you say that, are you referring to the time contemporaneous to the date that --

A Yes.

Q -- appears on the top memorandum?

A I recall having conversations with either Deborah or Donna, more than likely it was with Deborah, and I remember her saying something to me about the fact that the Criminal Division had in fact passed on the package and they still needed an answer and I -- it seems to me what I said, well, see can you reconstitute or can you send what you have got now that there is a deputy; I can get some action for you because Mr. Heymann's here and he's got the authority, we'll get it done now. And this is what she sent up and the name "Margolis" in the upper right-hand corner, that's my signature -- that's my handwriting.

What I did is this was in a -- there was lots and lots of things that now showed up in the Deputy's office. I sent this in to David for him to see and then he wrote back in the big scrawl on the bottom, Doug, please brief me on the background and dated it 6-9-93. And we had a discussion probably that same day about the background of this and we drafted a memorandum or letter to the district that basically attached the Criminal Division's -- our discussion was this: I looked briefly at this letter and if you look at the very end of it,

the recommendation, they found that there wasn't enough information to warrant the investigation -- or initiation of a criminal investigation.

Assuming, at least I assumed, which was I found out subsequent to be incorrect, assuming that whoever wrote that memo in the fraud section had talked to the Assistant U.S. attorneys in the district, I assumed that in fact there wasn't -- they had determined together that there wasn't anything, and this was the type of memo you would get from the Criminal Division to help support a district's position, and in fact it says you know, it's one of those we wouldn't disagree if you declined it.

David and I talked about it and basically decided that if there was no case then the issue of a recusal was moot. So we sent a letter, drafted a letter that went to the district that attached to this that said unless you have other information -- and I am now paraphrasing because I don't recall.

Q Sure.

A It was something along the lines of unless you have new information, it appears that the Criminal Division has found that there's not sufficient information for an investigation, and we find that there's no need to recuse you at this time if there is no investigation. But if you, one of those things, but if there is further information, then it

should be relooked at.

I have not seen that again. I didn't ever see a signed copy that I know of. I believe it was prepared for David to sign. It can't be found. At least the Department doesn't have it in their paperwork. But I have reason to believe that assistant attorneys in Arkansas got it because I have had a conversation with Mr. Johnson, who is the first assistant.

Q Michael Johnson?

A Yes. And I asked him if he had ever seen that letter from Margolis and he said that he had.

Q Okay.

A It may have been a different one. Maybe he misunderstood what I said. I know that it did not go back through the executive office to the district the way it reall should have because the other note on here is dated 6-23. It says, per Doug, send back to district for decision, Criminal suggested declination. I am pretty sure that is Donna Henneman or someone in legal counsel because Donna Henneman called me.

I was now the interim U.S. attorney in the Middle District of Florida, my home district, and I remember that shortly after I got there she called me and said, what happened, and I said, well, we sent a letter to the district; didn't you see it? No, we didn't. I said, well, we sent a letter saying just what she has related here.

Q So it is your recollection that this letter that was drafted for possibly Mr. Margolis' signature would have been after June 8th but prior to June 23rd?

A Before that because I'm trying to remember when I went down to Florida. The 17th sticks in my head. But I mean, it was done before I left and I would have thought that it was done by the 10th or the 11th. It was done -- we did it really quickly. I mean, it was -- David says it looks like there's no case; doesn't that moot the issue? I said, yeah, I agree with you. So we sent them a letter saying, unless there is further information. I said, it is my understanding that the district had that letter and that it has been seen by people there so they must have received it. But I have not seen a copy.

Q And just to be clear, with regard to the underlying memorandum generated by the Fraud Section, did you review that carefully or just --

A I never read it.

Q -- quickly?

A Until semi-recently.

Q Okay.

A And there were a lot of reasons why. First, I read -- the way you deal with things when you are just -- when you don't have to make a decision on the merits of anything -- and that was the Criminal Division's responsibility. First, I

was a little bit surprised. We didn't ask them for what we got back. We asked for where should it go and should there be a recusal. I suppose that request generated this declination memo of sorts. But I looked real quickly at it and that was it. I mean, I never read the thing closely. Like I testified earlier --

Q Well, I don't --

A Like I said here earlier today, I never read -- I never recognized that there was not contact between the Fraud Section and the district in Arkansas. I assumed that it happened and it wasn't until I read this memo closely not -- just pretty recently that I was sort of surprised that, oh my, they only relied upon the referral papers, that's all and it was limited to that. So I incorrectly assumed that there had been coordination or discussions.

Q Okay.

A And I was wrong.

Q When did you start preparing to go back to the Middle District of Florida?

A Just a day or two before I left. Bob Ginsman, who was U.S. attorney, had been kept on longer than most because his wife was in the process of having twins, babies, and after they were delivered and things were back to norm, then the Department said it's time.

Q Did you have any further involvement in the matter

of the Madison Guaranty referral?

A No.

Q Okay. There is some evidence that in September of 1993 Ms. Westbrook or Ms. Henneman may have had some conversations with you about the fact that the issue had not yet been decided. Do you recall anything, any discussions at that time?

A It is possible. I was U.S. attorney. They might have said, you know, that thing still hasn't been addressed; and I probably would have said, well, that doesn't surprise me.

Q How about this? At one point EOUSA learned that there were going to be a number of additional criminal referrals regarding Madison Guaranty. Did you have any conversations in the period of September and October of 1993 with anyone from EOUSA about how new referrals on Madison Guaranty should be handled?

A I don't believe so. Because I don't have any independent -- I don't recall knowing anything about subsequent referrals until I read about it in the newspaper. It is possible that, you know, at some conference or something somebody came up to me and just mentioned something, and I might have said, well, X, Y and Z. But I was being U.S. attorney and was pretty busy, and I don't -- I don't recall having any -- in fact, like I said, I don't think so because

when I read something in the paper about subsequent referrals, it surprised me.

Q Okay. Just give me one minute, please.

A Sure. There is this.

Q Okay, now just a second ago you were holding up 006676.

A Correct.

Q This is a memorandum dated March 19, 1993 from Mr. Keeney to your attention. Do you recall if you saw that contemporaneously?

A I do not believe that I did. Because when I saw it subsequent, I was surprised. I wouldn't have been asking, I wouldn't have been concerned where it was if this had come to me because I would have known. But I don't recall it coming up to the Deputy Attorney General's office or me seeing it until Deborah Westbrook supplied it to me.

Q Okay. At about that time in March of 1993, can you just describe for me the physical layout of the Deputy's office.

A Most of it was locked up and there was me in my office, which had been my office. The support people for the most part were upstairs working with the new Attorney General because she came aboard about this time, 16, 17, March.

Q "She" meaning Ms. Reno?

A Ms. Reno, yes.

Things were pretty much in disarray. We had people that were -- that were key support people to the White House because there was no Deputy's office. I don't know that I was even in Washington at this time because for years I had done my two weeks active duty in the Reserves the last part of March, the first part of April, and spent two weeks overseas in Japan and Hawaii.

Q That is pretty consistently?

A It was for five years. It was within a week or two each time and we normally came back the week before Easter or the Saturday before Easter was about the time we got back in encons. So it was very possible that I wasn't there.

While this is addressed to my -- the fact that it is addressed to me doesn't mean that it came to me. The people that handled correspondence in the Department of Justice assumed that there was no Deputy Attorney General's office, and the fact that it had my name on it would have been no moment.

There was stuff addressed to people, you know, who had been there; letters were still -- there was lots and lots of things that were still being sent or circulated that had inappropriate names or addresses and things on them, so it is very possible that there was no effort ever made to send this to me, that it went to some repository awaiting the Deputy Attorney General.

RPTS STEIN

DCMN KRISTOFFERSEN

[1:10 p.m.].

Q Did Mr. Hubbell ever ask you questions concerning the existence of any investigatory matter that might involve either -- did Mr. Hubbell ever ask you concerning any investigatory matter that might involve Bill Clinton?

A No, I never had a conversation with Mr. Hubbell except to the extent that he brought Catherine Landreth, who was being vetted to be U.S. Attorney in Nevada, into Mr. Heymann's office one day when I was present, and they turned her over to me. I said hello. That is the only time I recall speaking to Mr. Hubbell.

Mr. Sgro. You mean ever, not just with respect to this case?

The Witness. Ever.

Mr. Clark. I believe that is going to do it.

Mr. Sgro. I just have a couple of questions.

EXAMINATION BY MR. SGRO:

Q Mr. Frazier, you had testified earlier that you first saw one of the two urgent reports generated in October of '92. You had spoken with then Deputy Attorney General Terwilliger. Could you convey the substance of that conversation?

A It was very brief. I went in to find out if George

knew about this, and he obviously did. There is a passing comment that that wasn't something we were going to take any action on whatever that meant; the Deputy's Office wouldn't do anything anyway, except maybe the Deputy himself could cause something to happen.

But it was obvious the point of the conversation was -- this was shortly before the election, and that was this wasn't something that ought to go to the Washington Post. I was surprised that it didn't come out in the news media at that time, because enough people in the Department knew about it and saw the urgent request.

Q I want to refer your attention back to the February 9, 1993 memo prepared by Anthony Moscato through you for then Acting Attorney General Stu Gerson. That memorandum, dated February 9th, is it your understanding that the memorandum ever went to Gerson?

A The only way to tell is to look at the routing sheets from the Exec Sec, and I believe its shows Acting AG through ODAG Frazier, referred to, and it would have gone to Criminal.

Q That is when the memorandum Bates stamped 006683 from you to John C. Keeney was generated?

A This transmitted the whole package. It should have gone from -- to Criminal, and from Criminal it should have to the Acting AG. It is possible that Exec Sec sent a copy on to

the Acting AG.

Q If that happened, did you hear anything about it?

A No, I don't know if they did or not. Normally it would happen is, it would go down to the Criminal Division, and when they finished with it, it would go on where it was destined.

Q The general practice at that time, as you said earlier, was to send potential recusals to the Criminal Division for review and input?

A Yes.

Q From that date, February 18, 1993, when you sent that memorandum down, your next involvement with this matter, at least according to the paper, could have been March 1993, but you testified earlier you may have been on leave and may never have seen this memorandum?

A That is true. I don't know how it left the Criminal Division. If it went with the original routing, it wouldn't have gone to me but to the Acting AG.

I don't recall ever seeing that March 19th, signed by Urgenson, for Keeney, memo.

Q Could you give the general sense for what it was like or what the -- strike that.

During this time of transition at the Department, can you give a brief description of what it was like working in the Deputy Attorney General's Office, or even dealing with the

Attorney General's Office, or the Criminal Division, for that matter?

A I don't want to say something trite. Mass confusion. When you take an entire administration out on one day and people come in who aren't -- you don't even know where they are going to end up, and they are wandering around trying to get things done and have no clue, it is confusion.

The biggest problem was, as you recall, Mr. Gerson was not supposed to be there very long, and it ended up he stayed awhile.

Q In your time in the Deputy Attorney General's Office, in your involvement with this matter, was there any effort -- had anyone spoken to with you to slow down the investigation, move it faster, or do anything other than try to handle it the proper way, amongst the confusion?

A No.

Q That is all I have.

Mr. Clark. Thank you very much for attending, Mr. Frazier.

[Whereupon, at 1:15 p.m., the deposition was concluded.]

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT HISTORY DATA SHEET

From: MOSCATO, ANTHONY C., DIRECTOR, EOA
To: ACTING AG. (THRU: ODAG/~~FRAZIER~~) ODD: 02-17-93
Date Received: 02-09-93 Date Due: 05-16-94 Control #: X93021101532
Subject & Date
02-09-93 MEMO REGARDING A RECUSAL BY THE U.S. ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF ARKANSAS ON A RESOLUTION TRUST CORPORATION REFERRAL; WITH ATTACHMENTS; THRU ODAG/ FRAZIER; FOR AG COMMENTS AND SIGNATURE.

SEE E.S. 92102115319 AND 92100714754 CONTROL SHEETS ATTACHED

	Referred To:	Date:		Referred To:	Date:	
(1)	DAG;FRAZIER	02-11-93	(5)			SPEC:
(2)	CRM;KEENEY	02-19-93	(6)			
(3)			(7)			PRTY: 1
(4)			(8)			
	INTERIM BY:			DATE:		OPR:
	Sig. For: ACTING AG.			Date Released: 08-17-94		KIM

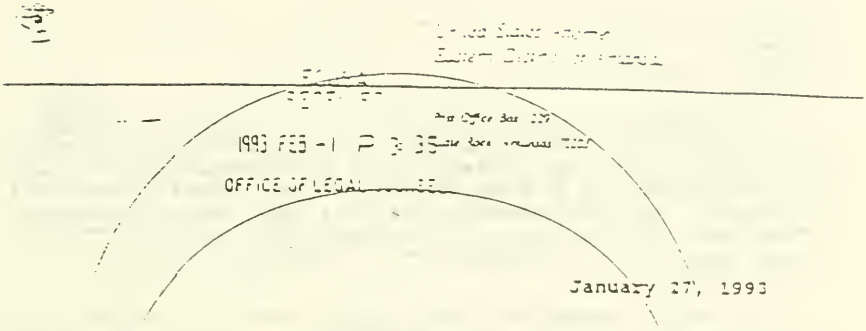
Remarks
(1) FOR ODAG TO INITIAL ON THE "THRU" LINE. RETURN THRU EXEC. SEC.
(2) W/MEMO FROM ODAG/FRAZIER TO CRM/KEENEY ~~DATED 02-18-93~~ REQUESTING REVIEW AND RECOMMENDATION. RETURN THRU EXEC. SEC., ROOM 4400-AA. BJ
10-26-93. PLEASE PROVIDE EXEC. SEC. WITH A CY OF REPLY.(LH)
02-03-94. CLOSE PER CRM. PER CRM/TINKHAM, CRM/URGENSON

Other Remarks:
SENT A CY TO E.S. ON 03-19-93. CRM/TINKHAM WILL MAKE EFFORT TO FURNISH E.S. WITH A CY OF REPLY. DD CHGD TO 05-16-94. LH
07-12-94. PER CRM/TINKHAM, CANNOT LOCATE A CY. (LH)
08-17-94. CLOSE OUT PER OAG/TEMPLETON. CY NOT AVAIL. (LH)

OF FOR CONCURRENCE 2/12/93
FILE: CONFLICT OF INTEREST

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

017456



January 27, 1993

Ms. Donna Hennenan
Office of Legal Counsel
Executive Office for U.S. Attorneys
Main Justice Building
Washington, D.C. 20530

Re: RTC Referral C0004

Dear Ms. Hennenan:

This is a follow-up to my letter of October 16, 1992, which I believe was previously sent to you. If not, a copy is enclosed.

RTC officials have again contacted this office following an FOIA request upon them by some member of the Little Rock media.

RTC's contact with us was to determine the position of this office regarding their response to the FOIA request. Specifically, RTC wanted to know if a production of referral documents would affect our investigation.

The purpose of this letter is to clarify any possible confusion.

First, we have no investigation ongoing. Second, we have informed RTC of this and further suggested they should follow the appropriate FOIA law in responding to the request. I believe this RTC inquiry makes it appropriate for me to advise you as to the present status of the above referral.

Our position as related in the enclosed letter of October 16 is self-explanatory. As previously indicated, it seems prudent that a limited preliminary investigation of allegations pertinent to Mr. and Mrs. McDougal and Ms. Anspaugh should be considered. The taking of 302's from these individuals should determine whether there is merit to substantiate further investigation.

Ms. Jerri Hamman
Page 2
January 27, 1993

I believe this office has a conflict of interest in conducting an investigation or presenting an indictment against these individuals. Previous prosecution of Mr. McDougal and two other defendants resulted in a not guilty verdict. Several allegations suggesting political prosecutions were made during the trial. These were patently false but a second investigation/prosecution could easily give the appearance of inappropriate motivation by this office.

I would appreciate and expect that any decision of investigation, indictment, prosecution or declination be the responsibility of the Department of Justice. I have resigned my position as United States Attorney effective March 1, 1993, and am separating service with the Department of Justice that date. I will be happy to transfer the RTC workpapers or make them available for your review.

Best Regards,

Charles A. Banks

CHARLES A. BANKS
United States Attorney

CB/bw

U.S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

February 18, 1993

MEMORANDUM TO: John C. Keeney
Acting Assistant Attorney General

FROM: Douglas N. Frazier
Associate Deputy Attorney General

RE: Recusal by the U.S. Attorney's Office for the Eastern District of Arkansas on a Resolution Trust Corporation Referral

The attached recusal package is forwarded for your review and recommendation. Thanks.

Attachment

GAC 000383

U.S. Department of Justice

Criminal Division

Typed: 3/2/93

Assistant Attorney General

Washington, D.C. 20530

MAR 19 1993

MEMORANDUM

TO: Douglas N. Frazier
Associate Deputy Attorney General

FROM: John C. Keeney /s/ SCK by LAK
Acting Assistant Attorney General

SUBJECT: Recusal by the U.S. Attorney's Office for the Eastern District of Arkansas on a Resolution Trust Corporation Referral.

The attached recusal package was forwarded for review from your office on February 18, 1993. We have reviewed the material in the package and have concluded that there is no identifiable basis for recusal by the United States Attorney. Further, we would not question a decision by the United States Attorney to decline further substantive action on the referral. A copy of the Fraud Section's memorandum summarizing our review is attached for your use and, should you decide it is appropriate, for forwarding to the United States Attorney's Office in Little Rock.

Attachments

Records
Section Chron.
Exec. Sect.
Keeney
Urgenson
McDowell
Carver
Branch

000000

U.S. Department of Justice

Washington, D.C. 20530

MEMORANDUM

TO: GERALD E. MCDOWELL
CHIEF
FRAUD SECTION

FROM: MARK J. MACDOUGALL
TRIAL ATTORNEY

RE: RESOLUTION TRUST CORPORATION CRIMINAL REFERRAL NO. C0004, DATED AUGUST 31, 1992, NAMING JAMES B. MCDOUGAL, SUSAN H. MCDOUGAL AND LISA ANSPAUGH

DATE: FEBRUARY 23, 1993

This memorandum responds to your request that a review of the captioned criminal referral be undertaken and a preliminary recommendation made regarding further investigation and prosecution. The referral names JAMES B. MCDOUGAL (an officer, director and shareholder of the former Madison Guaranty Savings & Loan of Little Rock, Arkansas), SUSAN H. MCDOUGAL (a director and shareholder of Madison Guaranty and the wife of James B. McDougal) and LISA ANSPAUGH (a business associate of the McDougals) as persons suspected of criminal violations. Ref. at 2,3 and 4. The author of the criminal referral, Laura Jean Lewis (Criminal Investigator), also identifies Governor (now President) BILL CLINTON, HILLARY RODHAM CLINTON and Arkansas Lieutenant Governor (now Governor) JIM GUY TUCKER as witnesses. Ref. at 18. Further, the author of the referral makes allegations concerning former Senator J. WILLIAM FULBRIGHT but does not name Fulbright among the persons suspected of criminal violations. Ref. at 7-8, 12 and 14.

A. SCOPE OF REVIEW

In preparing this memorandum, the following documents were reviewed: (1) RTC Criminal Referral No. C0004, dated August 31, 1992, (2) Letter dated September 1, 1992 from L. Richard Iorio, RTC Field Investigations Officer, to Charles A. Banks, United States Attorney for the Eastern District of Arkansas, (3) Letter dated October 16, 1992 from Charles A. Banks to Don Pettus, Special Agent in Charge, Federal Bureau of Investigation/Little Rock Field

Office, and (4) Letter dated January 27, 1993 from Charles A. Banks to Donna Henneman, Office of Legal Counsel/Department of Justice. None of the transactional documents described in the referral were provided or reviewed. Accordingly, all references in this memorandum to factual allegations or claims are based solely on statements included in the referral.

B. CRIMINAL VIOLATIONS ALLEGED

The author of the referral cites conspiracy (18 U.S.C. § 371), misapplication (18 U.S.C. § 657) and bank fraud (18 U.S.C. § 1344), as suspected violations. Ref. at 1.

C. SUMMARY OF FACTUAL ALLEGATIONS

According to the referral, James and Susan McDougal were shareholders and directors of Madison Guaranty Savings and Loan of Little Rock, Arkansas. James McDougal is also identified as an officer of the institution. The extent of the McDougals' equity interest in Madison Guaranty and the office or offices held by James McDougal are not specified in the referral. Lisa Anspaugh is identified as a business partner of Susan McDougal who assisted Ms. McDougal in bookkeeping for various business entities. While no specific information is provided, the facts alleged in the referral suggest that the McDougals were also active in real estate development at the time of their association with Madison Guaranty.

The referral is focused on the activity in the demand deposit accounts maintained at Madison Guaranty by the McDougals and a group of business entities allegedly under their control during the period February 1984 through July 1987. The author of the referral alleges that various transfers of funds among these accounts, often involving the creation or funding of overdrafts, constituted criminal activity. The author specifically cites "unauthorized loans, check kiting, possible forgery (or at the very least, extensive use of unauthorized signatures), potential misappropriation of funds, possible illicit campaign contributions, diversion of loan proceeds, and potential bank fraud". Ref. at 5.

In support of these allegations, the author of the referral describes some 76 banking transactions, nearly all involving the making, presentment or payment of checks by one of the McDougals or by business entities associated with the McDougals. Ref. at 6 - 17. Based solely on this information, it would appear that the McDougals regularly issued checks on Madison Guaranty accounts with insufficient funds. Once payment was made on these checks, the resulting overdraft would often be funded by a check drawn on another McDougal account at Madison Guaranty, which frequently

created yet another overdraft in the second account. Notations on some of the checks suggest that they reflected loans from one entity under the control of the McDougals to another or to one of the McDougals individually.

The referral further suggests that many of the checks bearing the signature of one of the McDougals were, in fact, signed by the other McDougal or by Lisa Anspaugh. The referral cites no evidence, however, that any instruments were executed in the name of an authorized signer without permission. The referral further notes a check in the amount of $3,000, drawn on a personal account of Mr. and Mrs. McDougal and dated April 4, 1985, which was made to the order of the "Bill Clinton Campaign Fund". This account allegedly carried an overdrawn balance at the time the check was written which continued for approximately 30 days. Ref. at 11. On the same date a second check in the amount of $3,000, payable to Madison Guaranty, was drawn against one of the McDougals' business accounts. Ref. at 6. Other than the alleged overdrafts, the significance of these checks to any theory of criminal activity is not clear. In addition, in several instances, the author of the referral alleges that $15.00 overdraft fees were charged by Madison Guaranty to McDougal accounts but were subsequently cancelled.

The author of the referral also alleges that, "the McDougal's [sic] clearly diverted funds from their [Madison Guaranty] home purchase and improvement loan of $351,502, funded in 2/85, for other purposes". Ref. at 7. The referral specifically alleges that more than $100,000 was "diverted" to the repayment of other loans then due from the McDougals to Madison Guaranty. Ref. at 7 and 10. No evidence is offered, however, that any false statement or entry was made by either of the McDougals or Ms. Anspaugh in connection with the home loan or that the improvements to be done on the home were not completed.

D. ALLEGATIONS RELATING TO CLINTONS AND FULBRIGHT

The author of the referral lists President Clinton and Hillary Rodham Clinton as the first two of six "...witnesses who might have information of the suspected violation". Ref. at 18. No factual claims can be found in the referral to support the designation of Mr. or Mrs. Clinton as witnesses.

Other than the campaign contributions, cited above, the referral simply identifies the Clintons as among, "[t]hose who allegedly stood to gain the most from these numerous and questionable inter-account transactions". Ref. at 5 and 17. This claim is based upon the implication by the author of the referral that the Clintons may have invested in one or more real estate ventures undertaken by the McDougals. Ref. at 5. Citing newspaper

references, the author also speculates concerning a $25,000 check issued by one of the McDougal entities in March 1985, stating that "...this could have been the time frame in which Whitewater (the McDougal business entity) was conducting transactions regarding the house that was allegedly purchased and subsequently sold by Ms. Clinton". Ref. at 13. No other information regarding this speculation is contained in the referral.

Similarly, several references are found in the referral to former Senator J. William Fulbright as a principal of a corporation named "Earth Movers, Inc." Ref. at 7-8, 12 and 14. The referral describes two checks drawn against McDougal accounts in April and May, 1985, totalling $50,000, which were made or endorsed to the order of Earth Movers, Inc. One of these checks, in the amount of $30,000, was issued by one of the McDougal entities to James McDougal, endorsed by McDougal to Earth Movers, then used by Earth Movers to purchase a Madison Guaranty cashier's check. The referral states that the $30,000 cashier's check had not been located. Other than creating or increasing overdrafts in the subject accounts, facts suggesting the significance of these checks or the implied involvement of Fulbright in the McDougals' financial affairs are not provided in the overdraft.

E. ANALYSIS

The referral provides substantial factual support for the assertion that Mr. and Mrs. McDougal's conduct may have constituted a breach of fiduciary duty, abuse of position, and self-dealing. The referral does not provide, however, factual allegations sufficient to establish the elements of any of the criminal statutes used in the prosecution of bank fraud cases (18 U.S.C. §§ 215, 656, 657, 1005, 1006, 1014, 1344 or 1956).

The author of the referral, for example, repeatedly alleges "check kiting" on the part of the McDougals. Check kiting involves the use of accounts at two or more financial institutions to obtain interest-free loans by taking advantage of the time required to complete the check-clearing process. The conduct described in the referral, however, is almost fully limited to the issuance and deposit of checks, drawn on accounts with insufficient funds, within Madison Guaranty. While the issuance of such "bad checks" may constitute a violation of state law, it is generally outside the scope of Federal prosecution.

Moreover, the referral does not include allegations of conduct suggesting a level of criminal intent necessary to satisfy that element of any of the principal Federal bank fraud statutes. Misapplication of funds, (18 U.S.C. §§ 656 or 657), limited to bank insiders, requires that the act be done "willfully", defined as

voluntarily and purposely, with the specific intent to disobey or disregard the law. Fifth Circuit Pattern Jury Instructions at 51. The general bank fraud statute (18 U.S.C. § 1344) requires that a scheme or artifice be executed in an effort to defraud the institution "knowingly", defined as voluntarily or intentionally, not because of mistake or accident. Fifth Circuit Pattern Jury Instructions at 49. The false entry statutes (18 U.S.C. §§ 1005 and 1006), also limited in scope to bank insiders, require that the false entry be made "with intent to defraud" the financial institution, defined as the intent to cheat or deceive the bank. Fifth Circuit Pattern Jury Instructions at 130.

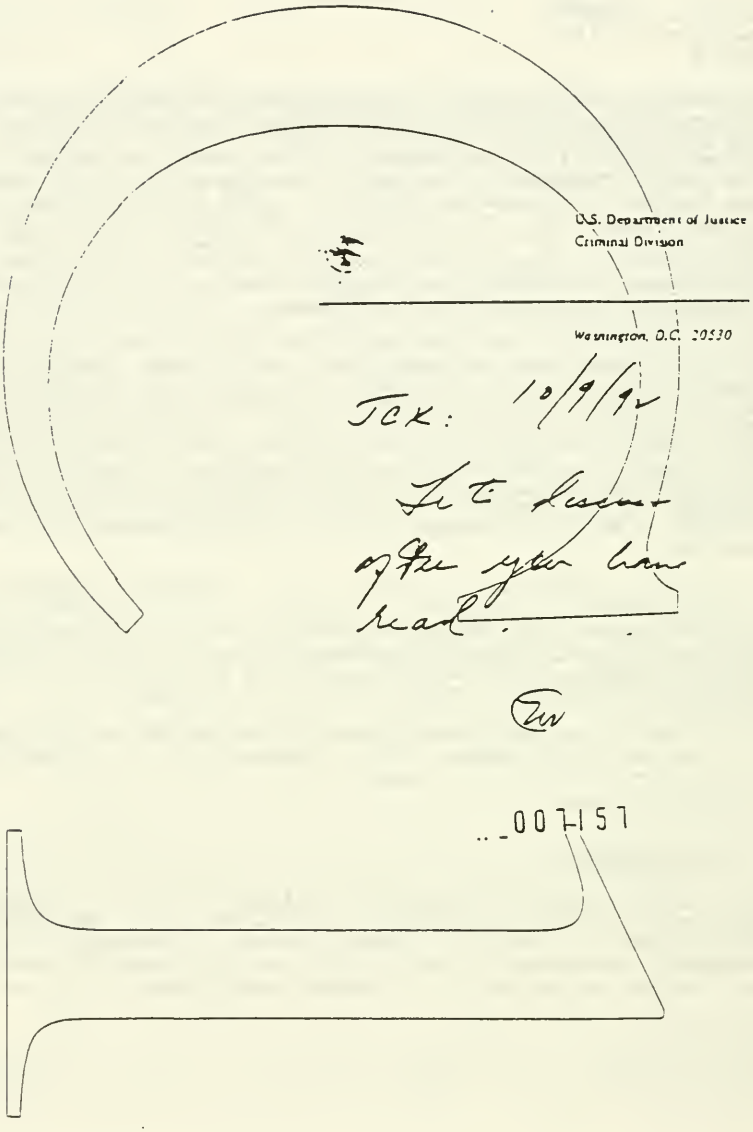
The absence of facts establishing criminal intent on the part of the McDougals argues persuasively against the initiation of a criminal investigation. Further, the referral does not claim that any specific loss to the institution resulted from the McDougal's checking account activity. Ref. at 19. The payment of checks drawn against deficient balances and the waiver of overdraft fees are common, if improper, accommodations regularly extended by banks to substantial customers. The referral does not allege that this account activity was not correctly reflected on the books and records of Madison Guaranty or in reported to federal regulatory agencies.

It should also be noted that James B. McDougal was apparently indicted, tried and acquitted in 1988 or 1989 in connection with his involvement with Madison Guaranty. Ref. at 2; Letter from Charles A. Banks, United States Attorney, to Don R. Pettus, Special Agent in Charge, dated October 16, 1992. No details relating to the previous prosecution of McDougal have been provided.

Finally, no facts can be identified to support the designation of President Bill Clinton, Hillary Rodham Clinton or Governor Jim Guy Tucker as material witnesses to the allegations made in the criminal referral.

F. RECOMMENDATION

Based solely upon available information, and in light of applicable law and current Fraud Section standards for prosecution, the conduct of James B. McDougal, Susan H. McDougal and Lisa Anspaugh as described in the criminal referral does not appear to warrant the initiation of a criminal investigation.


U.S. Department of Justice
Criminal Division
Washington, D.C. 20530
JCK: 10/9/91
Let Lisa
after you have
read.
007157

U.S. Department of Justice
Executive Office for United States Attorneys

Office of the Director — Washington, D.C. 20530

DATE: June 8, 1993

TO: Douglas N. Frazier
Associate Deputy Attorney General

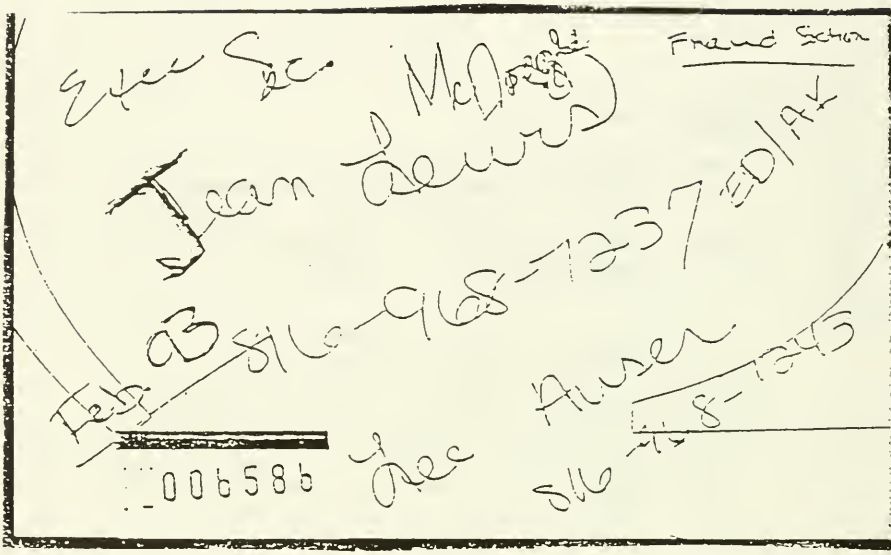
FROM: Deborah C. Westbrook
Legal Counsel

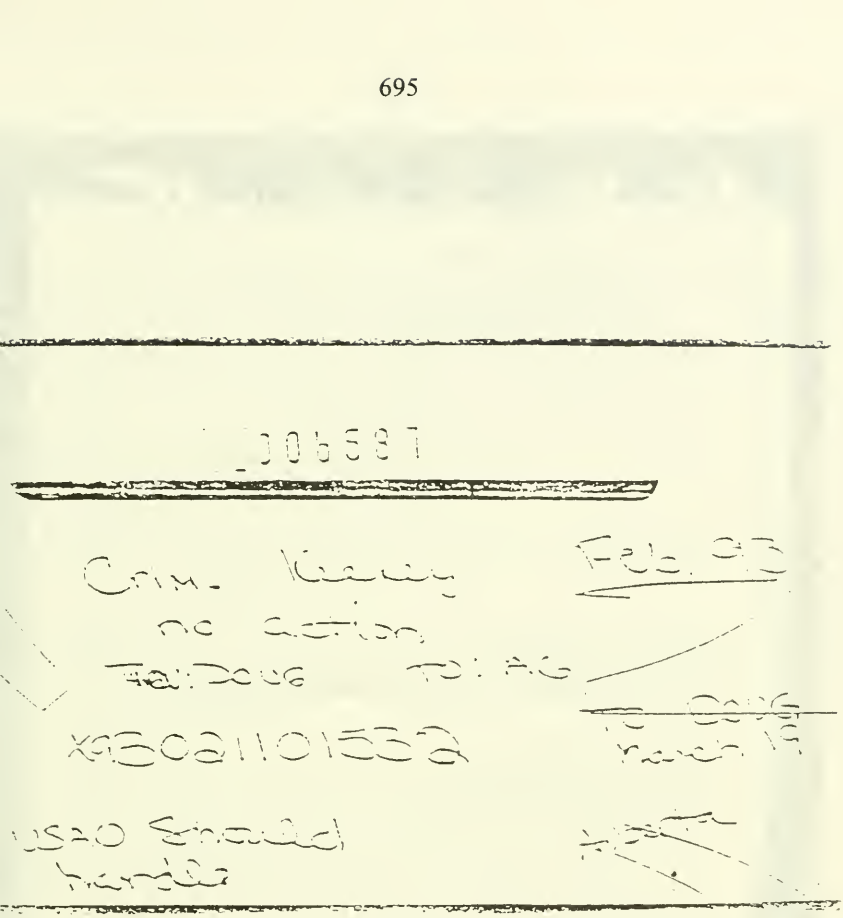
Pursuant to our conversation of June 7, 1993, attached is a memorandum dated March 19, 1993, regarding the recusal of the United States Attorney's office for the Eastern District of Arkansas on a Resolution Trust Corporation referral. Please advise this office of your decision regarding this matter. If you have any questions, you can reach me at 514-4024.

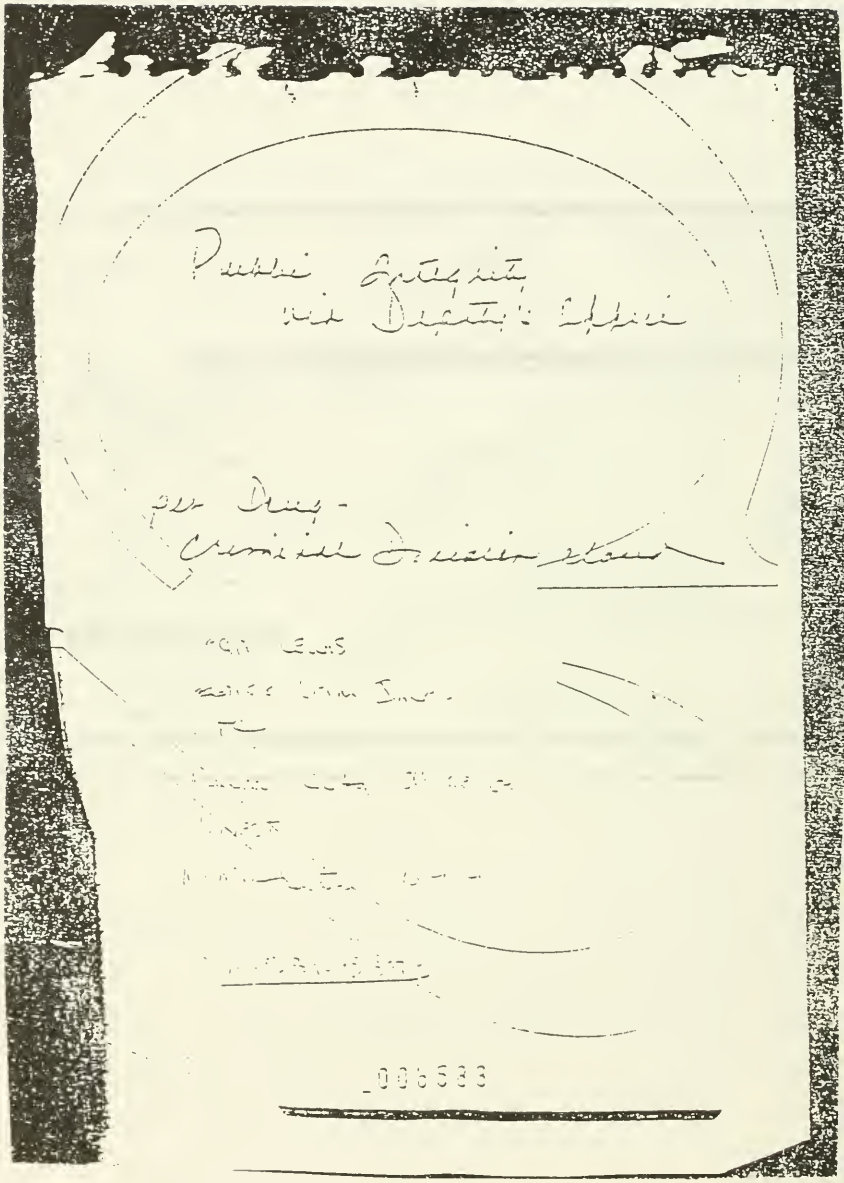
Attachment

Doug — Please brief me on background
6-9-93

006675


Exec Sec
Jean Adams
Fraud Section
916-978-1337 EDI/FX
Feb 83
916-978-1337
Auser
916-978-1345
Dec
916







Executive Office for United States Attorneys
Office of the Director

Main Justice Building, Room 1619
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

(202) 514-3121

FEB 9 1993

MEMORANDUM FOR: Stuart M. Gerson
Acting Attorney General

THRU: Douglas N. Frazier
Principal Associate Deputy Attorney General

FROM: Anthony C. Moscato
Director

SUBJECT: Recusal by the United States Attorney's office for the Eastern District of Arkansas on a Resolution Trust Corporation Referral

The attached letter from United States Attorney Charles A. Banks, Eastern District of Arkansas, asserts his office has a conflict of interest in pursuing a possible prosecution of a Mr. and Mrs. McDougal and a Ms. Anspaugh for alleged check fraud, check kiting, misuse of position, bank fraud, forgery and conspiracy. Mr. Banks requests that the Department of Justice determine the prosecutive merit of this matter. The United States Attorney's office has previously prosecuted Mr. McDougal and two other individuals in late 1988 on similar charges and they were found not guilty. The Resolution Trust Corporation (RTC) has forwarded new and additional information to the United States Attorney's office on September 2, 1992, for consideration. As stated above, the second referral involves the same patterns of activity for which these individuals have been found not guilty, but present different transactions.

Mr. Banks believes his office should not be involved in the prosecutorial determination because it may give rise to the appearance of inappropriate prosecutorial motivation by his office. The matter may involve President and Mrs. Clinton as witnesses. Mr. Banks states in his letter to this office that the RTC's second referral of September 2, 1992, merits a "limited preliminary investigation" of the allegations contained therein.

On October 16, 1992, Mr. Banks informed the RTC by letter (attached) that his office would not participate in an investigation into this matter prior to November 3, 1992. He

stated further "[] that after such a lapse of time the insistence for urgency in this case [by the RTC] appears to suggest an intentional or unintentional attempt to intervene into the political process of the upcoming presidential election."

It is our understanding that subsequent to Mr. Banks' October 1992 response, the RTC contacted the United States Attorney's office regarding a Freedom of Information Act request it received from the media regarding this matter. The RTC inquired how release of any information may affect the investigation. Mr. Banks related to the RTC that there was no ongoing investigation into this matter and advised the RTC to follow "the appropriate FOIA law in responding to the request" (see letter to this office). Mr. Banks has resigned as United States Attorney effective March 1, 1993.

Also attached are copies of Urgent Reports prepared by this office dated October 7 and 20, 1992, notifying the Department that the RTC referred this matter to the United States Attorney's office. The RTC referral itself is also included.

MATTER SHOULD REMAIN IN USAO: _____

MATTER AND FILES SHOULD BE REFERRED TO: _____

_____

OTHER: _____

_____

_____

_____ _____

Stuart M. Gerson Date
Acting ~~Attorney General~~

Attachments

ACM:DCW:RXM:sj;2/5/93
Robert/Misc/BANKS.MEM

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT HISTORY DATA SHEET

From: MCWHORTER, LAURENCE S., DIRECTOR, EOA
To: AG., DAG, ASG
ODD: NONE
Date Received: 10-07-92 Date Due: NONE Control #: X92100714754
Subject & Date
10-07-92 "SENSITIVE" MEMO ATTACHING A COPY OF A REFERRAL RECEIVED BY THE U.S. ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF ARKANSAS FROM THE RESOLUTION TRUST CORPORATION CONCERNING APPARENT CRIMINAL ACTIVITIES INVOLVING A SAVINGS AND LOAN ASSOCIATION.

	Referred To:	Date:		Referred To:	Date:	
(1)	OAG;	10-07-92	(5)			SPEC:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			1S
	INTERIM BY:			DATE:		OPR:
	Sig. For: NONE			Date Released:		EHZ

Remarks
CC INDICATED FOR CRM, OPC.
INFO CC: ODAG (RAPHAELSON).
(1) FOR INFORMATION.
.
LIMITED DISTRIBUTION.
(SEE EXEC. SEC. 92102115319.)

Other Remarks:

FILE: REPORTS/DOJ URGENT-SENSITIVE

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

017458

Memorandum

Subject

Referral from the Resolution Trust Corporation

Date

OCT 7 1992

To

William P. Barr
Attorney General

George J. Terwilliger, III
Deputy Attorney General

Wayne A. Budd
Associate Attorney General

From

Laurence S. McWhorter
Director
Executive Office for
United States Attorneys

Designation: Criminal Matter

Security Classification: Sensitive

Originating Unit: Office of the United States Attorney
Eastern District of Arkansas
Little Rock, Arkansas 72201

Clarification and Follow-up: Mac Dodson
First Assistant U.S. Attorney
Eastern District of Arkansas
Little Rock, Arkansas 72201
FTS: (501) 324-5261

Attorneys in Main Justice Familiar with the Matter: none

Synopsis: Attached is a copy of a referral received by the United States Attorney's office for the Eastern District of Arkansas from the Resolution Trust Corporation concerning apparent criminal activities involving Madison Guaranty Savings & Loan. It is the belief of the United States Attorney's office that further investigation into this matter is warranted. This matter is being brought to your attention because Governor Bill Clinton and his wife Hillary Clinton are listed as witnesses who may have information regarding the suspected criminal activities.

Attachment

cc: Robert S. Mueller, III
Assistant Attorney General
Criminal Division

Paul McNulty, Director
Office of Policy & Communications

OCT 20 1992

Referral from the Resolution Trust Corporation

(Initialed) L. S. M.

William P. Barr
Attorney General

George J. Terwilliger, III
Deputy Attorney General

Wayne A. Budd
Associate Attorney General

Laurence S. McWhorter
Director
Executive Office for
United States Attorneys

Designation: Criminal Matter

Security Classification: Sensitive

Originating Unit: Office of the United States Attorney
Eastern District of Arkansas
Little Rock, Arkansas 72203

Clarification and Follow-up: Charles A. Banks
United States Attorney
Eastern District of Arkansas
Little Rock, Arkansas 72203
FTS: (501) 324-5263

Attorneys in Main Justice Familiar with the Matter: none

Synopsis: This is an update to the previous Urgent Report dated October 7, 1992 (copy attached). Also attached is a copy of a letter from United States Attorney Charles A. Banks, Eastern District of Arkansas, to Don Pettus, Special Agent-in-Charge, Federal Bureau of Investigation, regarding a referral from the Resolution Trust Corporation. The referral involves Governor Bill Clinton and his wife Hillary Clinton who are listed as witnesses and may have information regarding suspected criminal activities by Madison Guaranty Savings & Loan.

Attachments

cc: Robert S. Mueller, III
Assistant Attorney General
Criminal Division

Paul McNulty
Director
Office of Policy and
Communications

U.S. Department of Justice
Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

DATE: June 8, 1993

TO: Douglas N. Frazier
Associate Deputy Attorney General

FROM: Deborah C. Westbrook
Legal Counsel

Pursuant to our conversation of June 7, 1993, attached is a memorandum dated March 19, 1993, regarding the recusal of the United States Attorney's office for the Eastern District of Arkansas on a Resolution Trust Corporation referral. Please advise this office of your decision regarding this matter. If you have any questions, you can reach me at 514-4024.

Attachment

Doug - Please brief me on background - DW 6-9-93

00bb75

U.S. Department of Justice

Criminal Division

EOUSA
RECEIVED

JCK:LAW:MCD:GAC:gac:lrc
Typed 3/2/93

Assistant Attorney General

Washington, D.C. 20530

MAR 19 1993

MEMORANDUM

TO: Douglas N. Frazier
Associate Deputy Attorney General

FROM: John C. Keeney /s/ JCK by LAW
Acting Assistant Attorney General

SUBJECT: Recusal by the U.S. Attorney's Office for the Eastern District of Arkansas on a Resolution Trust Corporation Referral.

The attached recusal package was forwarded for review from your office on February 18, 1993. We have reviewed the material in the package and have concluded that there is no identifiable basis for recusal by the United States Attorney. Further, we would not question a decision by the United States Attorney to decline further substantive action on the referral. A copy of the Fraud Section's memorandum summarizing our review is attached for your use and, should you decide it is appropriate, for forwarding to the United States Attorney's Office in Little Rock.

Attachments

Records
Section Chron.
Exec. Sect.
Keeney
Ungerson
McDowell
Carver
Branch

Action - Lt
W. Sc

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: MOSCATO, ANTHONY C., DIRECTOR, EOA
To: ACTING AG. (THRU: ODAG/FRAZIER) ODD: 02-17-93
Date Received: 02-09-93 Date Due: 02-24-93 Control #: X930211015S2
Subject & Date
02-09-93 MEMO REGARDING A RECUSAL BY THE U.S. ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF ARKANSAS ON A RESOLUTION TRUST CORPORATION REFERRAL; WITH ATTACHMENTS; THRU ODAG/ FRAZIER; FOR AG COMMENTS AND SIGNATURE.

SEE E.S. 92102115319 AND 92100714754 CONTROL SHEETS ATTACHED

	Referred To:	Date:		Referred To:	Date:	
(1)	DAG;FRAZIER	02-11-93	(5)			W/IN:
(2)	CRM;KEENEY	02-19-93	(6)			
(3)			(7)			PRTY:
(4)			(8)			1
	INTERIM BY:			DATE:		OPR:
	Sig. For: ACTING AG.			Date Released:		KIM

Remarks
(1) FOR ODAG TO INITIAL ON THE "THRU" LINE. RETURN THRU EXEC. SEC.
(2) W/MEMO FROM ODAG/FRAZIER TO CRM/KEENY DATED 02-18-93 REQUESTING REVIEW AND RECOMMENDATION. RETURN THRU EXEC. SEC., ROOM 4400-AA. BJ

Other Remarks:

OLA CONTACT:
DF FOR CONCURRENCE 2/12/93
FILE: CONFLICT OF INTEREST

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

rec'd 2-19-93
9300036-22

U.S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington D.C. 20530

February 18, 1993

MEMORANDUM TO: John C. Keeney
Acting Assistant Attorney General

FROM: Douglas N. Frazier
Associate Deputy Attorney General

RE: Recusal by the U.S. Attorney's Office for the Eastern District of Arkansas on a Resolution Trust Corporation Referral

The attached recusal package is forwarded for your review and recommendation. Thanks.

Attachment

001193

U.S. Department of Justice

Executive Office for United States Attorneys
Office of the Director

Main Justice Building, Room 1619
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

(202) 514-21

FEB 9 1993

MEMORANDUM FOR: Stuart M. Gerson
Acting Attorney General

THRU: Douglas N. Frazier
Principal Associate Deputy Attorney General

FROM: Anthony C. Moscato
Director

SUBJECT: Recusal by the United States Attorney's office for the Eastern District of Arkansas on a Resolution Trust Corporation Referral

The attached letter from United States Attorney Charles A. Banks, Eastern District of Arkansas, asserts his office has a conflict of interest in pursuing a possible prosecution of a Mr. and Mrs. McDougal and a Ms. Anspaugh for alleged check fraud, check kiting, misuse of position, bank fraud, forgery and conspiracy. Mr. Banks requests that the Department of Justice determine the prosecutive merit of this matter. The United States Attorney's office has previously prosecuted Mr. McDougal and two other individuals in late 1988 on similar charges and they were found not guilty. The Resolution Trust Corporation (RTC) has forwarded new and additional information to the United States Attorney's office on September 2, 1992, for consideration. As stated above, the second referral involves the same patterns of activity for which these individuals have been found not guilty, but present different transactions.

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On October 16, 1992, Mr. Banks informed the RTC by letter (attached) that his office would not participate in an investigation into this matter prior to November 3, 1992. He

stated further "[] that after such a lapse of time the insistence for urgency in this case [by the RTC] appears to suggest an intentional or unintentional attempt to intervene into the political process of the upcoming presidential election."

It is our understanding that subsequent to Mr. Banks' October 1992 response, the RTC contacted the United States Attorney's office regarding a Freedom of Information Act request it received from the media regarding this matter. The RTC inquired how release of any information may affect the investigation. Mr. Banks related to the RTC that there was no ongoing investigation into this matter and advised the RTC to follow "the appropriate FOIA law in responding to the request" (see letter to this office). Mr. Banks has resigned as United States Attorney effective March 1, 1993.

Also attached are copies of Urgent Reports prepared by this office dated October 7 and 20, 1992, notifying the Department that the RTC referred this matter to the United States Attorney's office. The RTC referral itself is also included.

MATTER SHOULD REMAIN IN USAO: _____

MATTER AND FILES SHOULD BE REFERRED TO: _____

_____

OTHER: _____

_____

_____

_____ _____

Stuart M. Gerson Date
Acting Attorney General

Attachments

U.S. Department of Justice

United States Attorney
Eastern District of Arkansas

Post Office Box 1229
Little Rock, Arkansas 72203

EOUSA
RECEIVED
1993 FEB -1 P 3:35
OFFICE OF LEGAL COUNSEL

January 27, 1993

Ms. Donna Henneman
Office of Legal Counsel
Executive Office for U.S. Attorneys
Main Justice Building
Washington, D.C. 20530

Re: RTC Referral C0004

Dear Ms. Henneman:

This is a follow-up to my letter of October 16, 1992, which I believe was previously sent to you. If not, a copy is enclosed.

RTC officials have again contacted this office following an FOIA request upon them by some member of the Little Rock media.

RTC's contact with us was to determine the position of this office regarding their response to the FOIA request. Specifically, RTC wanted to know if a production of referral documents would affect our investigation.

The purpose of this letter is to clarify any possible confusion.

First, we have no investigation ongoing. Second, we have informed RTC of this and further suggested they should follow the appropriate FOIA law in responding to the request. I believe this RTC inquiry makes it appropriate for me to advise you as to the present status of the above referral.

Our position as related in the enclosed letter of October 16 is self-explanatory. As previously indicated, it seems prudent that a limited preliminary investigation of allegations pertinent to Mr. and Mrs. McDougal and Ms. Anspaugh should be considered. The taking of 302's from these individuals should determine whether there is merit to substantiate further investigation.

I believe this office has a conflict of interest in conducting an investigation or presenting an indictment against these individuals. Previous prosecution of Mr. McDougal and two other defendants resulted in a not guilty verdict. Several allegations suggesting political prosecutions were made during the trial. These were patently false but a second investigation/prosecution could easily give the appearance of inappropriate motivation by this office.

I would appreciate and expect that any decision of investigation, indictment, prosecution or declination be the responsibility of the Department of Justice. I have resigned my position as United States Attorney effective March 1, 1993, and am separating service with the Department of Justice that date. I will be happy to transfer the RTC workpapers or make them available for your review.

Best Regards,

Charles A. Banks

CHARLES A. BANKS
United States Attorney

CB/bw

U.S. Department of Justice

United States Attorney

Eastern District of Arkansas

Post Office Box 1229

Little Rock, Arkansas 72203

October 16, 1992
(Dictated 10-14-92)

Mr. Don Pettus
Special Agent in Charge
Federal Bureau of Investigation
#2 Financial Center, Suite 200
Little Rock, AR 72211

Re: RTC Referral No. C0004

Dear Mr. Pettus:

This is a followup to my previous meeting with you and my second review of the above referenced referral with supporting documents.

At the time we met, I explained to you my serious reservations about future prosecutions of the individuals involved in the referral. My evaluation of the referral indicates that there is not a prosecutable case capable of being proved beyond a reasonable doubt against any of the witnesses. While participation of some or all of these witnesses certainly suggests poor judgment, possible conflicts of interest or ethical infractions, proving specific intent or knowing criminal conduct would be a prosecutorial burden that could not be carried beyond a reasonable doubt.

The only allegations having any credibility worthy of possible deliberation for investigation exists against Mr. and Mrs. McDougal and Lisa Anspaugh. Even these allegations, combined with Mr. McDougal's previous acquittal, his present mental state along with no prospect of recovering lost monies from the institution have serious negative attributes for a successful prosecution of these insiders.

I am now advised that you have been ordered to do an immediate review to determine if an investigation is warranted. As part of same, you are required to send a prospective proposal for such investigation by Friday, October 16, 1992. Such an order does not apply to this office.

However, I do believe it might be helpful to reiterate what I have told you previously. Neither I personally nor this office will participate in any phase of such an investigation regarding the above referral prior to November 3, 1992. You may communicate this orally to officials of the FBI or you should feel free to make this part of your report.

While I do not intend to denigrate the work of RTC, I must opine that after such a lapse of time the insistance for urgency in this case appears to suggest an intentional or unintentional attempt to intervene into the political process of the upcoming presidential election. You and I know in investigations of this type, the first steps, such as issuance of grand jury subpoena for records, will lead to media and public inquiries of matters that are subject to absolute privacy. Even media questions about such an investigation in today's modern political climate all too often publicly purports to "legitimize what can't be proven."

For me personally to participate in an investigation that I know will or could easily lead to the above scenario and to the possible denial of rights due to the targets, subjects, witnesses or defendants is inappropriate. I believe it amounts to prosecutorial misconduct and violates the most basic fundamental rule of Department of Justice policy. I cannot be a party to such actions and believe that such would be detrimental to the Department of Justice, FBI, this office and to the President of the United States.

In due time, I will be happy to meet with you to discuss a limited examination and possibility of proving some of the allegations regarding Mr. and Mrs. McDougal and Ms. Ansbaugh. In the event I conclude that their case should be declined, which at this point is a distinct possibility, the DOJ can certainly override that decision and commit Department of Justice personnel and resources to both the investigation and prosecution of the case.

For your information, in the event I receive any press inquiry from any source whatsoever I am going to refer them to the supervisory officials in the Department of Justice and/or Resolution Trust Corporation.

Thank you.

Best Regards,

CHARLES A. BANKS
United States Attorney

CAB:bw

cc:

Floyd Mac Dodson
Executive Assistant U.S. Attorney

U.S. Department of Justice

United States Attorney

Eastern District of Arkansas

Post Office Box 1229

Little Rock, Arkansas 72203

October 16, 1992
(Dictated 10-14-92)

Mr. Don Pettus
Special Agent in Charge
Federal Bureau of Investigation
#2 Financial Center, Suite 200
Little Rock, AR 72211

Re: RTC Referral No. C0004

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Thank you.

Best Regards,

CHARLES A. BANKS
United States Attorney

CAB:bw

cc:

Floyd Mac Dodson
Executive Assistant U.S. Attorney

OCT 20 1992

Referral from the Resolution Trust Corporation

(Initialed) L. S. M.

William P. Barr
Attorney General

George J. Terwilliger, III
Deputy Attorney General

Wayne A. Budd
Associate Attorney General

Laurence S. McWhorter
Director
Executive Office for
United States Attorneys

Designation: Criminal Matter

Security Classification: Sensitive

Originating Unit: Office of the United States Attorney
Eastern District of Arkansas
Little Rock, Arkansas 72203

Clarification and Follow-up: Charles A. Banks
United States Attorney
Eastern District of Arkansas
Little Rock, Arkansas 72203
FTS: (501) 324-5262

Attorneys in Main Justice Familiar with the Matter: none

Synopsis: This is an update to the previous Urgent Report dated October 7, 1992 (copy attached). Also attached is a copy of a letter from United States Attorney Charles A. Banks, Eastern District of Arkansas, to Don Pettus, Special Agent-in-Charge, Federal Bureau of Investigation, regarding a referral from the Resolution Trust Corporation. The referral involves Governor Bill Clinton and his wife Hillary Clinton who are listed as witnesses and may have information regarding suspected criminal activities by Madison Guaranty Savings & Loan.

Attachments

cc: Robert S. Mueller, III
Assistant Attorney General
Criminal Division

Paul McNulty
Director
Office of Policy and
Communications

006592

OCT 7 1992

Referral from the Resolution
Trust Corporation

William P. Barr
Attorney General

George J. Terwilliger, III
Deputy Attorney General

Wayne A. Budd
Associate Attorney General

Laurence S. McWhorter
Director
Executive Office for
United States Attorneys

Designation: Criminal Matter

Security Classification: Sensitive

Originating Unit: Office of the United States Attorney
Eastern District of Arkansas
Little Rock, Arkansas 72203

Clarification and Follow-up: Mac Dodson
First Assistant U.S. Attorney
Eastern District of Arkansas
Little Rock, Arkansas 72203
FTS: (501) 324-5263

Attorneys in Main Justice Familiar with the Matter: none

Synopsis: Attached is a copy of a referral received by the United States Attorney's office for the Eastern District of Arkansas from the Resolution Trust Corporation concerning apparent criminal activities involving Madison Guaranty Savings & Loan. It is the belief of the United States Attorney's office that further investigation into this matter is warranted. This matter is being brought to your attention because Governor Bill Clinton and his wife Hillary Clinton are listed as witnesses who may have information regarding the suspected criminal activities.

Attachment

cc: Robert S. Mueller, III
Assistant Attorney General
Criminal Division

Paul McNulty, Director
Office of Policy &
Communications

Resolution Trust Corporation
Kansas City Consolidated Office
4900 Main Street, P.O. Box 419570
Kansas City, Missouri 64141 (816) 531-2212 (800) 365-3342

September 1, 1992

RECEIVED
SEP 3 1992
U.S. ATTORNEYS OFFICE
LITTLE ROCK, ARKANSAS

The Honorable Charles A. Banks
United States Attorney
Eastern District of Arkansas
U.S. Post Office and Courts Building
600 W. Capitol, Room 331
P.O. Box 1229
Little Rock, Arkansas 72203

Re: #7236 Madison Guaranty Savings & Loan
Little Rock, Arkansas - In Receivership (11/29/90)
CRIMINAL REFERRAL NUMBER C0004

Dear Sir:

Certain matters have come to our attention which may constitute criminal offenses under Federal law. Enclosed is a report of an Apparent Criminal Irregularity.

Information in this referral may have been derived from financial records of customers of federally insured financial institutions. I hereby certify that (A) there is reason to believe that these records may be relevant to a violation of Federal criminal law, and (B) the records were obtained in the exercise of the RTC's supervisory or regulatory functions.

Due to the extensive nature of the exhibits relating to this referral, they are being sent to your office under separate cover.

Please direct any inquiries to the Investigator identified on the referral form, or to Lee O. Ansen, Department Head/Criminal Investigations, Kansas City Consolidated Office.

Sincerely,

L. Richard Iorio

L. Richard Iorio
Field Investigations Officer

Enclosure

RTC

Resolution Trust Corporation

730 - Kansas City Consolidated Office

CRIMINAL REFERRAL FORM

CRIMINAL REFERRAL # C0004

1. NAME AND LOCATION OF FINANCIAL INSTITUTION

Name/#:	MADISON GUARANTY SAVINGS & LOAN
Location:	16TH AND MAIN, P.O. BOX 1583
(Street/City/State/Zip)	LITTLE ROCK, ARKANSAS 72206

CERTIFICATE NUMBER:

If activity occurred at branch office(s), please identify:

2. ASSET SIZE OF FINANCIAL INSTITUTION: $118,855,000

3. APPROXIMATE DATE AND DOLLAR AMOUNT (PRIOR TO ANY ALLOWANCE FOR RESTITUTION OR RECOVERY) OF SUSPECTED VIOLATION:

Date: (Month/Day/Year)Time frame between 12/84 and 5/85
Amount: Estimated at $350,000 to $1,000,000

4. SUMMARY CHARACTERIZATION OF THE SUSPECTED VIOLATION. Check appropriate box(es)

				X		X	
		X				X	
X						X	

Applicable Section(s) of the U.S. Code:

X		X	
X			

MADISON GUARANTY SAVINGS & LOAN
CRIMINAL REFERRAL CODE
AUGUST 31, 1992
PAGE 2

5. THIS MATTER IS BEING REFERRED TO:

FBI, Little Rock, Arkansas
U.S. Attorney, Eastern District, Little Rock, Arkansas

6. PERSON(S) SUSPECTED OF CRIMINAL VIOLATION: Complete subparagraphs (a) through (e) on each individual suspected of criminal activity. (If more than one, use continuation sheet). Include primary suspects only. Individuals who may have knowledge of the suspect criminal activity, but who are not themselves suspected of being involved, should be listed as witnesses under Item 10. Provide any additional details known with respect to prior referrals or affiliations.

a. NAME: (First/MI/Last) McDougal, James B.

ADDRESS: (Street/City/State/Zip) Current Address Unknown

DATE OF BIRTH: (Month/Day/Year) Unknown

SOCIAL SECURITY NO: Unknown

b. Relationship to the financial institution: (Check all applicable blocks)

X	[illegible]		[illegible]		X	[illegible]	[illegible]
X	[illegible]		[illegible]	X	[illegible]	X	[illegible]	[illegible]

c. Is person still affiliated with the financial institution?
____ Yes _X_ No

If No, terminated ____, resigned _X_. Date (Month/Day/Year):

Describe circumstances: (If necessary, use continuation sheet)

McDougal resigned from the Board of Directors in December 1985; however he remained active in the Association's day to day business. He was removed from the Association when it was placed in Conservatorship by the RTC in 2/89.

d. Prior or related referrals:
_X_ Yes ____ No

If Yes, please identify.

McDougal was indicated, tried and acquitted in 1989 on charges stemming from his activities at Madison Guaranty Savings & Loan.

e. Is person affiliated with any other financial institution:
_X_ Yes ____ No

or business enterprise:
_X_ Yes ____ No

If yes to either or both, please identify.

McDougal was a shareholder and Board Member of the Bank of Kingston, which was at one point to be merged with Madison Guaranty; thrift records indicate that the merger was called off due to legal ramifications.

McDougal is a principal in the following business enterprises:

Madison Marketing	Designers Construction
McDougal & Associates	Madison Financial Corporation
Flowerwood Farms, Inc.	Whitewater Development Corp., Inc.
Pembrook Manor, Inc.	Rolling Manor, Inc.
Great Southern Land Co.	Tucker-Smith-McDougal

Smith-Tucker-McDougal Smith-McDougal

6. PERSON(S) SUSPECTED OF CRIMINAL VIOLATION: Complete subparagraphs (a) through (e) on each individual suspected of criminal activity. (If more than one, use continuation sheet). Include primary suspects only. Individuals who may have knowledge of the suspect criminal activity, but who are not themselves suspected of being involved, should be listed as witnesses under Item 10. Provide any additional details known with respect to prior referrals or affiliations.

a. NAME: (First/MI/Last) McDougal, Susan H.

ADDRESS: (Street/City/State/Zip) Unknown

DATE OF BIRTH: (Month/Day/Year) Unknown

SOCIAL SECURITY NO: Unknown

b. Relationship to the financial institution: (Check all applicable blocks)

	[redacted]		[redacted]		X [redacted]		[redacted]
X	[redacted]		[redacted]	X	[redacted]	X	[redacted]

c. Is person still affiliated with the financial institution:
____ Yes __X__ No

If No, terminated ____, resigned _X_. Date (Month/Day/Year):

Describe circumstances: (If necessary, use continuation sheet)

Susan McDougal resigned from the Board of Directors in December 1985, but remained active in the day to day activities of the association's subsidiary operations.

d. Prior or related referrals:
____ Yes __X__ No

If Yes, please identify.

e. Is person affiliated with any other financial institution)
____ Yes ____ No Unknown at this time

or business enterprise:
__X__ Yes ____ No

If yes to either or both, please identify.

Susan McDougal is a principal in the following business enterprises:

Madison Marketing	Designers Construction
McDougal & Associates	Madison Financial Corporation
Flowerwood Farms, Inc.	Whitewater Development Corp., Inc.
Pembrook Manor, Inc.	Rolling Manor, Inc.
Great Southern Land Co.	Tucker-Smith-McDougal
Smith-Tucker-McDougal	Smith-McDougal

6. PERSON(S) SUSPECTED OF CRIMINAL VIOLATION: Complete subparagraphs [a] through [e] on each individual suspected of criminal activity. (If more than one, use continuation sheet). Include primary suspects only. Individuals who may have knowledge of the suspect criminal activity, but who are not themselves suspected of being involved, should be listed as witnesses under Item 10. Provide any additional details known with respect to prior referrals or affiliations.

a. NAME: (First/MI/Last) Anspaugh, Lisa

ADDRESS: (Street/City/State/Zip) Unknown

DATE OF BIRTH: (Month/Day/Year) Unknown

SOCIAL SECURITY NO: Unknown

b. Relationship to the financial institution: (Check all applicable blocks)

[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
[redacted]		[redacted]	X	[redacted]	X	[redacted]	X	[redacted]	

c. Is person still affiliated with the financial institution:
_____ Yes __X__ No

If No, terminated ____, resigned ____. Date (Month/Day/Year):

Describe circumstances: (If necessary, use continuation sheet)

d. Prior or related referrals:
_____ Yes __X__ No

If Yes, please identify.

e. Is person affiliated with any other financial institution:
_____ Yes _____ No Unknown at this time

or business enterprise:
__X__ Yes _____ No

If yes to either or both, please identify.

Anspaugh was allegedly a partner with Susan McDougal in several companies, and assisted McDougal with her "bookkeeping" for the McDougal's various companies including:

Madison Marketing	Designers Construction
McDougal & Associates	Madison Financial Corporation
Flowerwood Farms, Inc.	Whitewater Development Corp., Inc.
Pembrook Manor, Inc.	Rolling Manor, Inc.
Great Southern Land Co.	Tucker-Smith-McDougal
Smith-Tucker-McDougal	Smith-McDougal

7a. EXPLANATION/DESCRIPTION OF SUSPECTED VIOLATION. Provide a brief narrative description of the activity giving rise to the referral, explaining what is unusual or irregular about the transaction. Details will be provided later in the form. The purpose of this paragraph is to provide a summary description of the overall transaction. (List applicable account numbers.)

Between February 1984 and July 1987, James B. McDougal, Susan H. McDougal, Lisa Anspaugh, Jim Guy Tucker, Stephen A. Smith, Bill Clinton, Hillary Rodham Clinton, and other individuals who are as yet unidentified, were principals in at least one, and possibly more, of the following companies and/or business interests, each of which maintained a checking account at Madison Guaranty Savings & Loan ("MGSL"):

Madison Marketing	Designers Construction
McDougal & Associates	Madison Financial Corporation
Flowerwood Farms, Inc.	Whitewater Development Corp., Inc.
Pembrook Manor, Inc.	Rolling Manor, Inc.
Great Southern Land Co.	Tucker-Smith-McDougal
Smith-Tucker-McDougal	Smith-McDougal

MGSL checking account histories from September 1984 through May 1985 were reviewed and analyzed for each of these entities (hereafter referred to as the "the combined companies"). The patterns that evolved from this review go back to February 1984, possibly earlier, and occur as late as July 1987.

During this time frame, some or all of the principals of the aforementioned companies allegedly allowed, or participated in, numerous questionable cash flow and "loan" transactions between the combined companies, and other financial institutions. The transactions reviewed and discussed herein will allege excessive overdrafts resulting in unauthorized loans, check kiting, possible forgery (or at the very least, extensive use of unauthorized signatures), potential misappropriation of funds, possible illicit campaign contributions, diversion of loan proceeds, and potential bank fraud; each of these actions, compounded by the extended time frame during which they occurred, lends causation to the probability that some or all of the McDougal's business associates and partners, the collective principals of these combined companies, had knowledge of these activities. The extensive nature of these activities could allegedly constitute ongoing criminal and regulatory violations which lasted for a period of three or more years, and could have ultimately contributed to the failure of the Association.

Although some of these companies, such as Madison Marketing, Madison Financial Corporation, and Flowerwood Farms appeared to be viable and active entities, the others appeared to be little more than shell companies with limited assets, whose checking accounts went through sporadic flurries of activity, "money in/money out", then reverted back to minimal balances with very limited activity. The account histories indicate that the collective checking accounts for these entities incurred very limited, if any, monthly service charges, despite their below minimum balances, and limited overdraft charges regardless of the excessive number of overdrafts in several of the accounts.

An analysis of the aggregate checking accounts for these entities between December 1984 and May 1985 reflects a minimum of 95 check transactions occurring by and between the combined companies and/or outside financial institutions, totalling $1,019,122. There were a minimum of 45 deposit transactions by and between the combined companies, affiliated persons and/or financial institutions which totalled $1,079,142. The resulting minimum number of "money in/money out" transactions for these combined, predominantly shell, companies was $2,098,264 over a six-month period of time. To produce all checks from each account, even for a six month period of time, would have been cost prohibitive as well as labor intensive; therefore, only randomly selected checks and deposits were produced from file for the 12/84 - 5/85 target time frame.

The combined companies "lent" one another in excess of $190,000 during the time frame of December 1984 through May 1985. There were 31 checks written, designated as "loans" by and between the entities, that totalled $192,886; however, there is no indication of any form of repayment between the entities. This premise lends support to the suspicion that the McDougal's were utilizing these shell companies as a personal "cash cow" from which to generate funds for their own use, and to the further benefit of some

or all of their business partners, including loan payments to outside financial institutions on behalf of the various partnerships. The McDougals' allegedly further used these shell companies to filter funds from MGSL through Madison Financial Corporation and it's subsidiaries for their own benefit.

From December 1984 through May 1985, the personal checking account of James and Susan McDougal (account # 424) was frequently overdrawn, with overdraft amounts of up to $30,000, lasting for two and three weeks at a time. During this time frame, the combined companies wrote at least 10 checks to James or Susan McDougal, totalling $53,170, calling the funds "loans". The minimum number of collective deposits from various sources shown going into the McDougal's account during the same time frame is in excess of $690,000, with checks going out of the account totalling over $622,000.

Examples of James McDougal's misuse of position are clearly indicated in the number of checks which force paid through the McDougal's joint checking account in the target time frame. The significant amounts, frequency and time span of the overdrafts are being alleged as unauthorized loans for the purposes of this referral. Substantiation of these activities is outlined in the following examples:

- On 1/28/85, check # 577 for $13,181.07 was written from the McDougal's account to Worthen Bank for a loan payment. The signature on the check reads "James B. McDougal", but bears no resemblance to his actual signature. The day the check was written, there were insufficient funds in the account, at which juncture a $14,000 "personal loan" was written from Flowerwood Farms (check/# 179) to Jim McDougal. (Susan McDougal's signature on the Flowerwood Farms check had also been forged). Despite the $14,000 loan, the check to Worthen Bank was force paid, overdrawing the McDougal's account by $<4,116.93>, where the balance remained until a deposit of $5,127.04 arrived from an unknown source.

- On 2/7/85, Susan McDougal sent check # 589 for $1,154.28 to the IRS; the day the check was written the account was overdrawn by $<3,282.00>, and when the check was force paid, the balance dipped to $<8,777,06>. The initial overdraft of $<3,282.00> was caused by the force payment of the previously mentioned check to Worthen Bank.

- On 4/4/85, Susan McDougal wrote check # 688 for $3,000 to the Bill Clinton Campaign Fund; the check was force paid on 5/3/85 when the account was already overdrawn $<7,897.73>, increasing the negative balance to $<10,897.73>. The same day, Flowerwood Farms wrote a $3,000 check to Madison Guaranty, which was apparently cashed; given the identical dollar amounts, the probability exists that these funds were also contributed to Clinton's campaign, which, if active solicitations for contributions were occurring, could have provided the impetus for his business associates to write checks totalling $6,000 to his campaign fund, one of which put the McDougal's own account in a $<10,000> negative balance.

- On 4/19/85, check # 699 for $55,000 was written on the McDougal's account to Flowerwood Farms; this was done to cover Flowerwood's existing overdraft of $<50,994.18> which occurred when an $86,612.68 check to Madison Guaranty was force paid. The $86,612.68 check (#1786) was a loan payment on McDougal related loan #1591. The date that the check for $55,000 was written, the McDougal's account balance was $19,429, and was subsequently overdrawn by $<28,077.82> when the check was force paid, documenting just one of many instances of check "kiting." The overdraft status on the McDougal's account was remedied by a $29,209.30 check from Execucar, Inc. (allegedly the "car leasing department" of Madison Financial Corporation), which was noted as a "refund on black 280 SL Mercedes" which had been purchased by the McDougal's on 4/18/85. A similar "refund" situation occurred with a $37,149.30 Madison counter check, written to Jim McDougal for an "85 380 SL Mercedes", signed by Henry (or Harry; signature almost illegible) Hamilton. Jim McDougal had previously written check # 691 for $37,149.30 to Execucar Inc.on 4/9/95. In one instance, the funds were rebated to the McDougal's when their account balance was in an excessive state of overdraft.

- On 5/24/85, check # 760 for $83,233.29 was issued from the McDougal's account to Union National Bank, allegedly for a loan payment. The date the check was written, the McDougal's account contained a balance of $963.19; Jim McDougal procured loan #2764 for $85,000 from MGSL, depositing the funds into their joint account to cover the check to Union National Bank. However, despite the deposited loan proceeds, the $83,233.29 check was force paid, putting the McDougal's account balance at $<4,096.03>

It should also be pointed out that the McDougal's clearly diverted funds from their MGSL home purchase and improvement loan of $351,302, funded in 2/85, for other purposes. Over $100,000 was diverted for the purpose of bringing principal and interest payments current on five separate MGSL loans, as evidenced by McDougal check # 611 for $95,562.62, and check # 612 for $5,659.17. It should be further noted that check #616 for $4,500 was written from the loan proceeds to Lorene McDougal, a relative, for undisclosed purposes.

In addition to McDougal's blatant misuse of position in allowing his personal account to exist in such an overdrawn state, he allowed the same circumstances to occur with the combined shell companies as well. Between 12/84 and 5/85, there were 16 overdraft situations within the accounts of the combined companies. The majority of these overdrafts were cured by deposits from one company to another, sometimes by "kiting" funds between accounts in which insufficient balances existed. This allegedly happened on at least two occasions with Whitewater Development, who evidently had another account (possibly at Bank of Kingston, now Madison Bank & Trust), into which funds were deposited from the MGSL Whitewater account, leaving it in an overdraft status.

During the target time frame, Whitewater Development wrote a minimum of 10 checks, totalling $70,639.41. Of these 10 checks, five checks totalling $60,625 were written on insufficient funds. The ensuing overdrafts were covered by funds from the other combined companies, some of which were provided by bank loans. Some of the Whitewater checks with more significant dollar amounts, such as check # 118 for $7,500, and # 128 for $5,071.23, were payable to The Bank of Cherry Valley for principal and interest on two separate loans, and were written on insufficient funds. Check # 118 was force paid, overdrawing Whitewater's account by $<7,492.04>, where the balance remained until check # 152 from Tucker-Smith-McDougal for $7,500 was deposited into Whitewater's account. The circumstances surrounding Whitewater check # 128 were similar, only the deposit came from the combined accounts of Rolling Manor, Tucker-Smith-McDougal, Flowerwood Farms and Pembrook Manor. Maurice Smith, principal and/or loan officer of the Bank of Cherry Valley, is allegedly a long time associate of Jim McDougal. Smith was also a frequent caller to Jim McDougal, according to the MGSL phone message logs.

Each instance in which Whitewater's actions resulted in an overdraft, no service charge or fees were assessed, with the exception of two in 1985, both of which were refunded. The two largest checks written by Whitewater during this time frame, check #137 for $25,000, payable to Ozarks Realty Co., and check # 138 for $30,000, payable to James McDougal (alleged "loan repayment" - although the records show no indication of any loan from McDougal to Whitewater) were both forced paid as there were insufficient funds in the account to cover either check. When the $25,000 check paid, placing the balance at $<24,470.90>, the overdraft was covered by a check from Flowerwood Farms for $24,455.90 (the amount of the overdraft, less the $15 service charge which was later refunded). The Flowerwood funds came from the proceeds of a $135,000 cashiers check drawn on Stephens Security Bank, Stephens, Arkansas. The $30,000 check written from Whitewater to James McDougal was written when Whitewater had a balance of $270.13. When the check was force paid, the balance went to $<29,744.87>, where it remained for two weeks until a $30,000 check from Madison Financial Corporation (subsidiary of MGSL) was deposited into Whitewater's account. There was no explanation given as to why Madison Financial would have given (or even "loaned") Whitewater Development $30,000.

At this juncture, it should be noted that shortly after the target time frame, in October 1985, the MGSL Board of Directors minutes reflect that Madison Financial Corporation was overdrawn by $2.7 million; the Board subsequently voted to call the overdraft "an investment in the service corporation", as up to 6% of the Associations assets could be invested in service corporations, from a regulatory standpoint. It should be further noted that the $30,000 check James McDougal received from Whitewater was endorsed to Earth Movers, Inc., (whose principal is former Senator J. W. Fulbright's

who subsequently endorsed it to Madison Guaranty for the purpose of obtaining a cashier's check (drawn from MGSL account #7001312, transaction #7801). The cashier's check is currently unavailable, so the final destination of the funds is yet undetermined.

In addition, it should be pointed out that the records of the former MGSL Chief Financial Officer, Greg Young, reflect a $30,000 "reserve" payment anticipated from Whitewater Development in 10/85 for an "engineering survey"; this information appears on a flow chart relating to Maple Creek Farms, a land investment/subdivision development of Madison Financial Corporation, and a second tier subsidiary of Madison Guaranty Savings & Loan. In addition, every month during the target time frame, Susan McDougal deposited a check for $285.13 from Logan Charter Service into the Whitewater account; these funds were diverted from the Bank of Kingston to whom they were all payable, and endorsed by Susan McDougal to Whitewater's MGSL checking account in an apparent effort to keep a minimal balance in the account.

Forgery is also alleged to be a possible factor in several of the checks written on the Whitewater account. According to the MGSL signature card for Whitewater Development Corporation, Inc., the only signatory on the account is Susan McDougal; however, the signature on the card allegedly bears little resemblance to Susan McDougal's actual signature. It is interesting to note that the $25,000 check written on the Whitewater account to Ozarks Realty Co., has "James B. McDougal" signed to it even though he is not a signatory on the account. The signature on the check was allegedly signed by someone else, whose handwriting bears a striking resemblance to that of Lisa Anspaugh, a McDougal business associate in a number of other enterprises. In fact, Ms. Anspaugh allegedly forged or signed both James and Susan McDougal's signature to checks drawn on all of the combined companies accounts on numerous occasions during the time frame in question. Although at least one of the checks written by Whitewater to the Bank of Cherry Valley was actually signed by Jim McDougal, most of them were signed "James B. McDougal", allegedly by Susan McDougal or Lisa Anspaugh. If these were not actual instances of forgery, per se, then there were certainly numerous cases of unauthorized signatures on the accounts. That being the case, the McDougal's apparently set few parameters for "signature authority" on their personal and corporate accounts, with multiple checks showing no less than three different signatures for "James B McDougal" and no less than four different signatures for "Susan H McDougal".

An overview of the Whitewater account history supports possible criminal action on the part of Susan McDougal, Lisa Anspaugh, and at least one other individual, for alleged forgery, or unauthorized signatures in the name of James B. McDougal (and in the case of Lisa Anspaugh, the name of Susan McDougal) on numerous checks. In addition, the fact that James McDougal was not a signatory on the account, but signed checks regardless of that fact, shows his reckless disregard for regulatory requirements and banking laws. McDougal's documented willingness to allow the frequent overdraft status on the Whitewater account, ensuring that loans payments were made and corporate obligations met, served his own benefit as well as that of some or all of his business partners. Although circumstances point to the probability that some or all of his business partners were aware of the activity taking place within the Whitewater partnership and corporate checking accounts, there is insufficient evidence at this time to prove that they had knowledge. Consequently, these individuals will appear on the list of witnesses contained at the end of this referral.

Similar instances were allowed to occur with the account of Tucker-Smith-McDougal, whose principals were James McDougal, Jim Guy Tucker and Stephen A. Smith. The following examples are noted:

- On 1/22/85, check #161 for $3,894.66 was written to First Commercial Bank for "interest" on a commercial loan. James McDougal's signature was allegedly signed or forged by Susan McDougal, who was technically the only signatory on the MGSL signature card. The date the check was written, the account did not contain sufficient funds, and subsequently went into an overdraft status of $<2,953.00> when the check force paid. The overdraft was cleared with a check from Flowerwood Farms (#176) for $3,500 on 1/28/85.

- On 3/13/85, check #166 for $4,000 was written to Citizen's Bank for "release deed Madison County". James McDougal's signature was yet again allegedly signed by his wife, Susan. The date the check was written, the Tucker-Smith-McDougal account did not contain sufficient funds, and the account went into overdraft status of $<3,027.69> when the check was force paid on 3/19/85. The account maintained an overdraft status until 4/9/85, when a deposit of $9,189.69 was received from Flowerwood Farms (check # 193). The funds from Flowerwood Farms were exactly enough to cover the existing overdraft, plus cover Tucker-Smith-McDougal check # 169 for $5,664.73 which had been written to Citizen's Bank of Marshall, Arkansas, on 4/1/85 before there were sufficient funds available to honor the check.

- On 3/11/85, First Mortgage, Inc. wrote check # 5923 for $1,150 to Madison Guaranty Savings and Loan. This check was allegedly endorsed by Susan McDougal for Madison Guaranty, and deposited to the account of Tucker-Smith-McDougal the day before a $2,500 check written to Whitewater cleared the account, leaving a balance of $72.31.

Similar instances involving the Flowerwood Farms account have been previously evidenced through the examples used in conjunction with the McDougal's personal checking account. Additional specific information on activity in each of the combined accounts will be forthcoming in the chronology of events which follows.

The extent of the foregoing activities will substantiate this referral's allegations of check kiting between the related entities ("the combined companies"), as well as transactions between McDougal's personal account and the combined companies. This referral will further allege that, due to the extended period of time over which these transactions occurred, these actions were probably known to some or all of the principals of the combined companies. Each of these principals appear on the witness list, as there is insufficient evidence at this time, as previously stated, to prove that they had knowledge of these activities. This range of events further serves to support the allegations of forgery, misuse of position, diversion of funds, and probable bank fraud as well as conspiracy to defraud the institution on the part of James McDougal, Susan McDougal and Lisa Knepaugh.

7b. GIVE A CHRONOLOGICAL AND COMPLETE ACCOUNT OF THE SUSPECTED VIOLATION: (Use continuation sheet, if necessary.)

• Relate key events to documents and attach copies of those documents

For purposes of clarification, the following chronology of events is broken down by entity account, and in the case of James & Susan McDougal, by individuals.

James B. and Susan H. McDougal, MGSL Account # 424

1/28/85 Check # 577 for $13,181.07 was issued to Worthen Bank for principal and interest payment on a loan. James McDougal's signature appears to have been forged, or signed by an unauthorized party on his behalf. There were insufficient funds in the account that date check # 577 was written; however, the McDougal's received a "personal loan" of $14,000 from Flowerwood Farms, Inc. (check # 179 - showing an allegedly forged "Susan McDougal" signature) on 1/29/85. Despite the $14,000 "loan"/deposit, the check to Worthen Bank was force paid on 2/6/85, leaving the account overdrawn $<4,116.97>, where it remained until 2/7/85 when a deposit of $5,127.04 was received from an unknown source.

2/5/85 Check # 589 for $3,154.28 was issued to the IRS. The check was allegedly signed by Susan McDougal. On the date it was written, the account was overdrawn by $<3,282.00>. When the check cleared on 2/19/85, the account's overdraft status increased to $<8,777.05>. As previously noted, the initial overdraft status on the account was caused when check # 577 for $13,181.07 to Worthen Bank was force paid.

2/19/85 Check # 611 for $95,562.62 was issued too Madison Guaranty Savings & Loan, for principal and interest payments on five McDougal related loans. This check cleared from loan proceeds of $351,502.80 deposited to McDougal's account on 2/22/85. The proceeds were designated "purchase and renovation of home" for the McDougals; however, over $100,000 of the proceeds were ultimately diverted for the purpose of bringing other debt current.

2/19/85 Check # 612 for $5,669.17 was issued to Madison Guaranty Savings & Loan for interest on a McDougal related $85,000 unsecured commercial loan. Again, the check cleared through the funds provided by proceeds from the home loan.

2/20/85 A deposit for $1,000 was credited to the McDougal's account; the deposit was check # 181 from Flowerwood Farms, allegedly signed by Susan McDougal, and deposited to their account when it was overdrawn $<11,687.09>.

2/21/85 Check # 615 for $178,301.02 was issued to Madison Bank & Trust (formerly the Bank of Kingston) to payoff "#4 Bettswood Mortgage at Pulaski Bank". #4 Bettswood is the address of the McDougal's new home. It is recommended that the Pulaski Bank records be reviewed to verify this information.

2/22/85 A deposit for $10,000 was credited to the McDougal's account; the funds coming from Madison Marketing check # 238 payable to Susan McDougal, with no specific stated purpose. Prior to this deposit, the McDougal's account was overdrawn $<8,612.05>.

2/22/85 Loan proceeds, in the form of Cashier's Check # 2218 for $351,502, were deposited into the McDougal's account. As noted, this loan was for the stated purpose of purchasing and renovating a home.

2/26/85 Check # 616 for $4,500 was issued to Lorene McDougal, one of Jim McDougal's relatives. This check did not indicate a specific purpose, and cleared through the funds provided by the loan proceeds. As the McDougal's were contributing to the Clinton Campaign fund during this time frame, it is recommended that a further investigation be undertaken to determine the possibility that these funds were provided to Lorene McDougal for the possible purpose of making additional campaign contributions on behalf of the McDougals or Madison Guaranty.

2/27/85 Check # 617 for $450 was issued to Lorene McDougal. Again, there was no designated purpose on the check, which raises the previously unanswered question. Both checks to Lorene McDougal were signed by Susan McDougal.

Check # 157 for $4,500 was issued to Madison Bank & Trust for interest on loan # 3376.72. This check also cleared from the home loan proceeds, putting the dollar amount of funds diverted for other debt to over $100,000.

NOTE: It appears that the McDougal's each kept their own set of checks for their account #424, and would apparently write checks from which ever pad was available at the time. The numbers on the checks frequently range all over the spectrum in a non-sequential order.

3/1/85 Check # 158 for $8,250 was issued to Robert T. Wilson for "payment on note". Wilson's specific role in this transaction has not been defined, nor has the purpose of the "note" (loan) in question. Jim McDougal allegedly signed this check, which appears to be a fairly rare occurrence.

3/10/85 Check # 178 for $13,248 was issued to Haynes Auto, with no specifically stated purpose, but would appear to be for the purchase of a car. The check is signed "Susan McDougal", but does not appear to be Susan McDougal's alleged signature. This check cleared from the home loan proceeds. The same day check # 179 for $1,738 was issued to Haynes Auto,

again with no specifically stated purpose, and check # 180 for $13,250 was written to a Mr. Charles Bronson, for no specifically stated purpose. All three of these checks, totalling $28,236, cleared from the proceeds of the McDougal's home loan.

3/10/85 Check # 181 for $4,852 was issued to ITT Kruse Int., the memo field shows several loan numbers. It is recommended that records be subpoenaed to determine the nature of, and participants in, this loan.

3/19/85 Madison Guaranty Savings issued check # 2104 for $30,750 to James B. McDougal for "reimbursement for lease auto purchased for Leasing Department". It is recommended that further investigation be conducted to determine if this was reimbursement for the $14,980 in checks written to Haynes Auto on 3/10, and possibly the $13,250 check also written on 3/19, to Charles Bronson. If this is the case, the checks written on 3/10 totalled $28,236, indicating that James McDougal was reimbursed for $2,514 that he did not actually spend.

3/29/85 Check # 676 for $11,000 was issued to Quapaw Title Company, with no stated purpose. This transaction would seem to indicate the possibility of a formal real estate sale or closing of some type; possibly related to the purchase of the McDougal's home, or related in some manner to the $25,000 transaction between Whitewater Development and Ozarks Realty Company. It is recommended that the Quapaw Title Company and Ozarks Realty Company records be reviewed to assess the purpose of the $11,000 check from the McDougals, and it's potential relationship to Whitewater and Ozarks Realty, if any.

4/4/85 Check # 688 for $3,000 was issued to the Bill Clinton Campaign Fund, and allegedly signed by Susan McDougal. The account balance on the date the check was written stood at $<7,897.73>; when the check cleared on 5/3, the overdraft status increased to $<10,897.73>. The account balance remained at this level until 5/9 when $5,281.21 was deposited from an unidentified source.

4/9/85 Check # 691 for $37,149.30 was issued to Execucar, Inc., allegedly a subsidiary of Madison Financial Corporation. The check did not state a specific purpose. When the check was written, the account had a balance of $34,538.78; the check cleared on 4/12 overdrawing the account by $<10,075.00>. Funds totalling the exact same amount were deposited into the McDougal's account on 4/22; the source being a Madison Guaranty Savings & Loan counter check for $37,149.30, allegedly signed by either Harry or Henry Hamilton, with the notation "85 MB 380 SL". It is conceivable that McDougal purchased the car, and then sold it for the same amount two weeks later. However, when considered with the fact that a similar situation occurred with McDougal and Execucar 9 days later on 4/18, the sale/purchase theory becomes increasingly implausible.

4/17/85 A deposit of $33,000 was credited to the McDougal's account; the source remains unidentified at this time, but research continues.

4/18/85 Check # 697 for $29,209.30 was issued to Execucar, Inc. for a black Mercedes. The same amount was refunded to the McDougal's account by Execucar on 5/1/85 when their account was overdrawn by $<28,812.96>. By this point the McDougal's have evidently purchased, and either returned or sold, two expensive cars in a 10 day period of time. It is recommended that these transactions be further investigated through the records of Execucar, Inc. to determine that nature of this activity.

4/19/85 Check # 699 for $55,000 was issued to Flowerwood Farms; this was a "loan" to cover Flowerwood's existing overdraft of $<50,994.17>, which occurred as a result of an $86,612.68 payment to Madison Guaranty Savings & Loan on

a McDougal related loan. At the time the $55,000 check/"loan" to Flowerwood was written, the McDougal's had $19,429.50 in their account. When the check was force paid on 4/23, the McDougal's account was overdrawn by $<38,077.82>

5/1/85 Check # 723 for $1,207.30 was issued to Madison Guaranty for the April and March payments on McDougal related loan # 1064. The account was overdrawn $<7,897.73> when the check force paid on 5/3/85. The end result of this transaction appears to be the McDougal's overdrawing their account, resulting in an unauthorized "loan" from the Association, in order to pay the Association for their April and March loan payments. There appears to be little, if any, logic to these circumstances.

5/1/85 Check # 704 for $50 was issued to the Democratic Party of Arkansas, for the purchase of "2 Jefferson Jackson Day dinner tickets". The account balance was $<5,826.36> when the check force paid.

5/15/85 Check # 748 for $20,000 was issued to Madison Guaranty for the purchase of Cashier's Check # 2704. The remitter on the Cashier's Check was Earth Mover's, Inc., whose principal is J.W. Fulbright, former Senator from Arkansas. Fulbright endorsed the check "for deposit only to Riggs National Bank" on 5/18. On 5/20, $20,000 was deposited into McDougal's account which was overdrawn $<17,682.20> at the time. The source of the deposit is undetermined at this time. It is recommended that Riggs National Bank records be reviewed to determine the possibility that these funds traveled from Fulbright back to McDougal. If so, this transaction is a likely candidate for possible check kiting.

5/16/85 A deposit of $8,370 was credited to McDougal's account, which was overdrawn $<26,052,20> at the time. The funds came from Flowerwood Farms check # 204 for $190, Pembrook Manor check # 128 for $5,300, Great Southern Land Company check # 126 for $180, Rolling Manor check # 212 for $2,400 and McDougal & Associates check # 107 for $300. Each of the checks was designated as a "loan".

5/24/85 Check # 760 for $83,233.29 was issued to Union National Bank. When the check was written, the account contained $963.19. McDougal borrowed $85,000 from MGSL (loan # 2764), and the loan proceeds were deposited into their account to cover the $83,233.29 check. However, when the check cleared on 5/31, it was forced paid, leaving the account with an overdraft balance of $<4,096.03>.

Whitewater Development Corporation, Inc., Account # 2301515
Principals: James and Susan McDougal
Bill and Hillary Rodham Clinton

12/7/84 The Whitewater account was overdrawn by approximately $<6,000>, when a deposit for $9,310 brought the balance up to $3,423.65. The deposit was made up of funds from the accounts of the combined companies: Tucker-Smith-McDougal check # 199 for $1,600, Rolling Manor check # 198 for $330 and Pembrook Manor check #130 for $7,100. Each check was designated as a "loan" to Whitewater, and each check was allegedly signed by either Susan McDougal, or Lisa Anspaugh signing as Susan McDougal. Once the deposit was credited, Whitewater issued check # 127 for $3,275.78 to the Bank of Cherry Valley, taking the account balance down to $147.47.

1/4/85 Check # 128 for $5,071.21 was issued to the Bank of Cherry Valley. The check was signed "James B. McDougal" (who had no signature authority on the account) allegedly by Susan McDougal, based on the handwriting. This check cleared the Whitewater account on 1/11 - the day after a deposit for $4,660 was made to Whitewater by the combined companies accounts.

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1/10/85 Whitewater received a deposit for $4,660 from the combined company accounts of Rolling Manor, Tucker Smith McDougal, Flowerwood Farms and Pembrook Manor, bringing the account balance to $5,095.27.

1/22/85 Check # 129 for $1,000 was issued to Whitewater Development Corporation, with the notation "Acct 317.5". This check cleared on 1/28; the same day that Flowerwood Farms issued check # 177 for $1,000 to Whitewater, bringing the account balance up to $1,446.07. Without the benefit of the deposit from Flowerwood, the check written by Whitewater to the Bank of Cherry Valley would have been insufficient.

2/13/85 Check # 132 for $3,000 was issued to Chris Wade (an appraiser, according to MGSL Board Minutes), with no specific stated purpose. The check was signed "James B. McDougal", allegedly by Susan McDougal. This check cleared on 3/13, when the Whitewater account was already overdrawn $<1,891.03>, increasing the overdraft to $<4,891.03>. On the same date, there was a deposit made to the Whitewater account from the combined companies accounts, curing the overdraft.

2/18/85 Check # 133 for $1,625 was issued to Charles E. James for "accounting" services. The check was signed "Susan McDougal", allegedly by someone other than Susan McDougal. This check cleared on 2/21/85, putting the account into overdraft status by $<1,192.06>. The account effectively stayed overdrawn until 3/13, when three deposits (two from the combined companies and one from an undetermined source) totalling $8,800 were credited. The deposits were for $3,300, from the combined accounts, $2,500 from Tucker Smith McDougal, and $3,000 from an unidentified source. Given the proximity of this deposit to the $3,000 check written to Chris Wade, it is recommended that further research be conducted to determine the possibility of Wade "refunding" the $3,000 back to Whitewater, which could account for the "mystery deposit."

2/21/85 Check # 134 for $1,000 was issued to Whitewater Development Corporation with the notation "Account 317.5". The date the check was written the account balance was $<1,192.06>, and when the check cleared on 2/28, the overdraft status increased to $<1,906.93>. Evidence points to the probability that the MGSL Whitewater account was allegedly "swapping", or kiting, checks with a sister account at another bank, in order to maintain a certain account balance.

3/7/85 Check # 135 for $650 was issued to Charles James, again for "accounting" services. This check cleared the account, taking the balance to $258.97 on 3/22.

3/22/85 Check # 137 for $25,000 was issued to Ozarks Realty Company; the purpose was not stated on the check. This check was signed "James B. McDougal, allegedly by Lisa Arspaugh, based on the handwriting. The date the check was written, Whitewater's account reflected a balance of $258.97; when the check force paid on 4/2, the account was overdrawn by $<24,470.90>, which included a $15 overdraft charge that was later rebated. The account stayed overdrawn until 4/9 when a $24,455.90 deposit was received from Flowerwood Farms (check # 1741). This deposit amount was exactly the amount of the overdraft, less the $15 overdraft charge. Flowerwood Farms provided the funds from a $135,000 cashiers check drawn on Stephens Security Bank of Stephens, Arkansas, which had previously been deposited to it's account.

NOTE: According to various Oklahoma, Texas and New York newspaper reports from March 1992, this could have been the time frame in which Whitewater was conducting transactions regarding the house that was allegedly purchased and subsequently sold by Ms. Clinton. It is recommended that the Whitewater and Ozarks Realty records be reviewed to determine the possibility of any existing relationship between these two transactions, and the nature of any such relationship, if found.

4/9/85 A deposit of $24,455.90 was credited to Whitewater's account. As previously noted, the funds came from Flowerwood Farms check # 194.

4/19/85 Check # 138 for $30,000 was issued to James B. McDougal with the notation "loan repayment". When the check was written, the account balance was $270.13; when the check force paid, the account was \overdrawn by $<29,744.87>. This check was signed "Susan McDougal", allegedly by Lisa Anspaugh. James McDougal endorsed this $30,000 check to Earth\Movers Inc. (J. W. Fulbright), who in turn endorsed it to Madison\Guaranty for the purchase of a Cashier's Check, drawn from MGSL account # 7001311, transaction # 7801. Research to locate the file of the Cashier's Check is continuing.

4/29/85 Check # 139 for $17 was issued to the Arkansas Director Finance Administration for the 1985 corporate franchise tax. The check was signed "Susan McDougal", allegedly by Lisa Anspaugh.

4/30/85 A deposit for $30,000 was credited to Whitewater's account. The funds were provided by Madison Financial Corporation, but no purpose was stated on the check. This deposit brought the Whitewater balance from $<29,744.87> to $255.13. It is recommended that the records of Madison Financial Corporation be reviewed to determine the specific business purpose of the funds remitted to Whitewater Development. The check from Madison Financial was signed by MGSL Chief Financial Officer, Greg Young, who was also responsible for creating the previously referenced "Reserves" spreadsheet (see referral summary) in which a 10/85 $30,000 "engineering survey" fee was to be charged to (or reserved from) Whitewater Development.

Tucker-Smith-McDougal, MGSL Account # 2301353
Principals: James B. McDougal
Jim Guy Tucker
Stephen A. Smith

1/22/85 Check # 161 for $3,894.66 was issued to First Commercial Bank for interest on a loan. The check was signed "James B. McDougal", allegedly by Susan McDougal. James McDougal does not appear on the signature card as a signatory on this account. The date the check was written, the account balance did not contain sufficient funds; when the check cleared on 1/28, the account was overdrawn $<2,953.00>. The same day, Flowerwood Farms made a $3,500 "loan" (check # 176) to Tucker Smith McDougal, allegedly for the purpose of covering the overdraft.

2/7/85 Check # 162 for $3,000 was issued to James B. McDougal as a "personal loan". The check was allegedly written and signed by Susan McDougal. This check was deposited to McDougal's account along with a check from Madison Financial Corporation for $7,127.04 noted as "salary" on the deposit slip.

2/14/85 Check # 163 for $300 was issued to James B. McDougal for "petty cash." This check was also allegedly written and signed by Susan McDougal.

2/17/85 Check # 164 for $1,600 was issued to Charles E. James for "accounting" services. The check was signed "Susan McDougal" allegedly by someone other than Ms. McDougal, and appears to be the signature showing on the actual MG&L signature card. As previously noted, the signature on the MGSL account signature card is not believed to be that of Susan McDougal.

3/11/85 A deposit of $1,150 was credited to the Tucker Smith McDougal account; according to the deposit slip, the funds were related to "Robert Armstrong". However, the check was actually payable to Madison Guaranty Savings, and endorsed on behalf of Madison Guaranty, allegedly by Susan McDougal, and subsequently deposited to the Tucker Smith McDougal account. This deposit was made one day prior to the clearing of Tucker Smith McDougal check # 165 for $2,500.

3/12/85 Check # 165 for $2,500 was issued to Whitewater Development. This check, along with checks from the other combined companies accounts totalling $3,300, were deposited to Whitewater on 3/12, curing an overdraft of $<4,891.03>. The overdraft status in the Whitewater account was caused by the force pay of check # 132 for $3,000 issued to Chris Wade.

3/13/85 Check # 166 for $4,000 was issued to Citizens Bank for "release deed in Madison County". This check was signed "James B. McDougal", allegedly by Susan McDougal. The date the check was written, there were insufficient funds in the Tucker Smith McDougal account; the check cleared on 3/19, overdrawing the account by $<3,927.60>. This overdraft situation existed for three weeks, until 4/9, at which time a deposit of $9,289.69 was made into the account by check # 193 from Flowerwood Farms. The difference in the deposit amount and the new account balance, $5,664.73, was exactly the amount necessary to cover Tucker Smith McDougal check # 169 for $5,664.73 to Citizen's Bank, written on 4/1 when the account was still overdrawn.

4/1/85 Check # 169 for $5,664.73 was issued to Citizen's Bank of Marshall, Arkansas for payment on "notes 40071190 and 00031484". The status of the account at this time was sufficiently discussed in the foregoing Tucker Smith McDougal transaction dated 3/13/85.

Flowerwood Farms, Inc. MCFL Account # 2301361
Principals: Undetermined at this time

12/11/84 Check # 170 for $8,000 was issued to James B. McDougal. At the time this check was issued, the McDougal's account was overdrawn by $<4,095.39>. This deposit from Flowerwood brought the balance up to $3,904.61

1/10/85 Check # 172 for $1,430 was issued to Whitewater Development as part of a $4,660 deposit. The funds from this deposit were allegedly used to cover Whitewater's check # 128 for $5,071.23 to the Bank of Cherry Valley.

1/22/85 Check # 173 for $6,202.26 was issued to First Commercial Bank for "Interest on note # 00003618". The check was signed "James P. McDougal" allegedly by Susan McDougal. The date the check was written, the account contained a balance of $866.74. However, on 1/23 a $28,500 deposit was credited to the account, received from Bill Henley (brother-in-law of Susan McDougal) allegedly for "20 acres in Pulaski County". The check for $6,202.26 cleared the Flowerwood account on 1/25.

1/24/85 Check # 175 for $3,500 was issued to James B. McDougal. This check was part of a $4,675.42 deposit to McDougal's account.

1/28/85 Check # 176 for $3,500 was issued to Tucker Smith McDougal for the alleged purpose of covering the existing Tucker Smith McDougal overdraft. This check was allegedly signed by Susan McDougal

1/28/85 Check # 177 for $1,000 was issued to Whitewater Development as a "loan" to cover Whitewater's existing overdraft. This check was allegedly signed by Susan McDougal.

1/29/85 Check # 179 for $14,000 was issued to James P. McDougal as a "personal loan". This check was signed "Susan McDougal", allegedly by someone other than Susan McDougal. The loan was allegedly intended to cover a $13,181.07 check written on McDougal's account to Worthen Bank; however, the check was force paid, and McDougal's account was overdrawn.

3/12/85 Check # 183 for $1,500 was issued to Great Southern Land Company, designated as a "loan." The same day, check # 184 for $500 was issued to McDougal & Associates, also designated as a "loan." This check was signed "Susan McDougal", allegedly by Lisa Ansbaugh.

4/1/85 Check # 188 for $11,763.11 was issued to International Paper Realty Corporation as a principal and interest payment on a note. The check was signed "Susan McDougal", allegedly by someone other than Susan McDougal. There was a balance of $1,550.91 in the account the date the check was written; however, a $135,000 deposit was received and credited prior to this check clearing.

4/3/85 Check # 189 for $53,053.41 was issued to First Commercial Bank to "pay off commercial loan". Funds for this check were derived from a $135,000 deposit to Flowerwood's account the same day.

4/3/85 A deposit of $135,000 was credited to the Flowerwood account from a Cashiers Check drawn on the Stephens Security Bank of Stephens, Arkansas. Funds from this deposit were remitted from Flowerwood to:

- Madison Guaranty for $3,000, check # 192 (further research into the possibility that this was a campaign contribution has previously been suggested)
- Tucker Smith McDougal for $9,189.69, check # 193, allegedly to cover an existing overdraft.
- Whitewater Development for $24,455.90, check # 194, allegedly to cover the overdraft caused by Whitewater's check for $25,000 to Ozarks Realty.
- First Commercial Bank for $53,053.41, check # 189, allegedly for a McDougal related loan payoff.
- International Paper Realty for $11,763.11, check # 188, for a loan payment
- Madison Guaranty Savings and Loan for $86,612.68, check # 196, allegedly to pay off a McDougal related loan. This check overdrew the account by $<30,994.18>, which was subsequently covered by James B. McDougal's check for $55,000, which overdrew McDougal's account by $<28,077.8>

4/4/85 Check # 192 for $3,000 was issued to Madison Guaranty Saving; there was no specific purpose stated on the check. As previously noted in this referral, it was recommended that further research be conducted into the disposition of these funds to determine the possibility that this was an additional campaign contribution, given the time frame involved.

4/9/85 Check # 193 for $9,189.69 was issued to Tucker Smith McDougal, allegedly for the purpose of covering the existing overdraft in the Tucker Smith McDougal account, as well as covering the yet outstanding Tucker Smith McDougal check # 169 for $5,664.73 to Citizen's Bank.

4/9/895 Check # 194 for $24,455.90 was issued to Whitewater Development, allegedly to cover Whitewater's overdraft, as previously noted. This check was signed "James B. McDougal", allegedly by Lisa Anspaugh.

4/17/85 Check # 196 for $86,612.68 was issued to Madison Guaranty Savings & Loan for "principal and interest" on McDougal related loan # 1591. This check overdrew the Flowerwood account by $<30,994.18> when it was force paid. Funds to allegedly cover this overdraft were provided by check # 699 for $55,000 from James B. McDougal's account. As noted in prior transaction analyses, the $55,000 check from Mcdougal overdrew his account by $<28,077.82>. This transaction provides a blatant example of the check kiting alleged in the summary of the referral.

5/16/85 Check # 204 for $190 was issued to James B. McDougal as a "loan." This check was part of a deposit from the combined accounts totalling $8,370, which went into McDougal's account at a time when it was overdrawn $<26,057.20>

Of the combined companies accounts, Flowerwood Farms, Inc., Whitewater Development Corporation, Inc., and Tucker Smith McDougal, in conjunction with the personal account of James B. and Susan H. McDougal, were the most active and egregious contributors to the alleged overdraft and check kiting activities. Although the other entities, (Rolling/Manor, Inc., Pembrook Manor, Inc., Great Southern Land Company, McDougal & Associates, etc.) contributed a significant share of the "combined companies" deposits and "loans" between the various accounts, the specifics regarding their activities have been omitted for the purposes of brevity. Individual transaction information for the "combined companies" accounts during the 12/84 - 5/85 time frame can be found in the attached database report, which outlines the dates, transaction types, check numbers, payee, payor and deposit recipients. This database has been individually sorted by date, dollar amount, payee, payor and deposit recipient in order to facilitate ongoing research and further investigative activities.

• Explain who benefitted, financially or otherwise, from the transaction, how much, and how.

Those who allegedly stood to gain the most benefit from these numerous and questionable inter-account transactions, were the principals of the combined entities; James and Susan McDougal, Lisa Anspaugh (who is a principal in Designer Construction and allegedly Madison Marketing, as well as an alleged business associate of Jim Guy Tucker), Bill and Hillary Rodham Clinton, Jim Guy Tucker, Steve Smith, and any other principals as yet unidentified. The overdrafts and "loan" transactions, or alleged check "swapping" and kiting, between the combined companies accounts ensured that loan payments and other corporate obligations were met, thus clearly benefitting the principals of each entity.

In addition, the McDougal's stood to gain extensive financial benefit by utilizing these various shell companies as a vehicle through which to channel funds from Madison Guaranty, through Madison Financial and it's subsidiaries, into the personal account of James and Susan McDougal.

• Furnish any explanation of the transaction provided by the suspect and indicate to whom and when it was given.

To date, no explanation has been given by any suspect.

• Furnish any explanation of the transaction provided by any other person.

No explanations of these transactions have been provided by anyone other than the Investigator at this time.

• Furnish any evidence of coverup by the suspect, or evidence of an attempt to deceive federal or state examiners or others.

This entire series of transactions by and between the combined companies and their accounts is being alleged as an effort by the McDougal's to "smokescreen" the flow of funds from Madison Guaranty and it's subsidiaries, into the various entities owned and operated by the McDougal's and their business associates.

• Indicate where the suspected violation took place (e.g., main office, branch, other).

These violations collectively took place at the Madison Guaranty savings and loan office at 16th and Main in Little Rock.

• Recommend any further investigation that might assist law enforcement in fully examining the potential violation.

Individual recommendations have been noted within the transactional analyses throughout the body of the referral. However, it should be reiterated that certain individuals on the witness list should be extensively interviewed with regard to their knowledge of the activities between the combined companies and their accounts.

7c. Indicate whether the suspected violation appears to be an isolated incident or whether it relates to other transactions. (Explain)

No; this violation was not isolated, but rather ongoing over a period of three or more years, possibly making a significant contribution to the failure of the institution.

8. EXCLUSION OF INFORMATION FROM THE REFERRAL:

Has any pertinent information been excluded from this referral as a result of any legal or other restraint?
_____ Yes __X__ No If so, why?

Have the excluded information or documents been segregated for later retrieval?
_____ Yes __X__ No

NOTE: DUE TO THE BULK OF THE EXHIBITS, THEY WILL BE KEPT IN THE U.S. ATTORNEY'S OFFICE UNDER SEPARATE COVER.

9. HAS SUSPECTED INDIVIDUAL(S) MADE ANY ADMISSIONS?

_____ Yes __X__ No If so, who?

10. WITNESSES:
List any witnesses who might have information about the suspected violation and describe their position or employment. Indicate if they have been interviewed. (Use continuation sheet, if necessary.)

NAME	ADDRESS	BUSINESS TELEPHONE NO.	HOME TELEPHONE NO.	INTERVIEWED YES	INTERVIEWED NO
1. Bill Clinton	Governor/AR and McDougal business associate	Little Rock, Arkansas	Unknown		X
2. Hillary Rodham Clinton	Counsel/MGSL and McDougal business associate	Little Rock, Arkansas	Unknown		X
3. Jim Guy Tucker	Lt. Governor/AR and McDougal business associate	Little Rock, Arkansas	Unknown		X
4. Stephen A. Smith	McDougal business associate	Little Rock, Arkansas	Unknown		X
5. J. W. Fulbright	McDougal business associate	Little Rock, Arkansas	Unknown		X
6. Greg Young	Former MGSL Chief Financial Officer	Little Rock, Arkansas	Unknown		X

In addition to the foregoing witnesses, it is also recommended that the following individuals be interviewed with respect to their knowledge:

Kirby Randolph - former receptionist at MGSL, and recipient of all monthly statements on the combined companies accounts in lieu of mailing; also the wife of R. D. Randolph, a McDougal business associate and frequent depositor to various combined companies accounts.

R. D. Randolph - former McDougal business associate; allegedly involved with several of the combined companies.

Bonnie Crocheron - currently employed by MGSL's successor entity, Central Bank and Trust. Formerly involved in administration at the Association; allegedly knowledgeable regarding the institutions Demand Deposit Accounts and their holders.

Charles F. James - accountant for the combined companies, and registered agent for Whitewater Development Corporation.

11. DISCOVERY AND REPORTING:

a. Who discovered the suspected violation and when?

Investigator; in May 1992

b. Has the suspected violation been reported to the Board of Directors?
_____ Yes _____ No Not Applicable

By whom and when? Not Applicable

c. Has the Board of Directors taken action?
_____ Yes _____ No Not Applicable

If so, what and when? Not Applicable

d. Has the suspected violation previously been reported to federal or local law enforcement or to any federal or state supervisory agency?
_____ Yes ___X___ No

If Yes, Agency:
Agent:
Address: (City/State)
Telephone Number:

12. LOSS:

a. Amount of Loss known: $ Undetermined at this time
b. Restitution by: Not Applicable
In the amount of: $ Not Applicable
c. Name of Applicable Surety Bond Company:
d. Amount of Bond: $
e. Amount of deductible: $
f. Was claim filed? _____ Yes _____ No
g. Settlement by Surety Company: $
h. Total restitution and settlement to date: $ Not Applicable
i. Net Loss: (After subtracting any amounts paid in the form of restitution or settlement) $
j. Is additional loss suspected? ___X___ Yes _____ No
(If yes, explain)

The nature of the transactions identified in this referral could lead to additional losses under further investigation.

k. Has the suspected violation had a material impact on, or otherwise affected, the financial soundness of the institution? If so, please explain.

Yes; the activities identified and alleged within this referral could have contributed to the failure of the institution.

13. OFFER OF ASSISTANCE:

The individuals listed below are/will be authorized to discuss this referral with appropriate law enforcement officials and to assist in locating or explaining any documents pertinent to this referral, provided that contact is first made with:

NAME	TELEPHONE NUMBER
Lee O. Ausen/Department Head/ Criminal Investigations/RTCC	(816) 531-2212
L. Richard Iorio/Field Investigations Officer/RTCC	(816) 531-2212

14. FORM PREPARED BY: Laura Jean Lewis
Position: Criminal Investigator
Agency/Institution: Resolution Trust Corporation
Telephone Number: (816) 968-7237
Date: August 31, 1992

15. AUTHORIZATION FOR TRANSMITTAL:

Investigator — Date 8/31/92

Criminal Investigations Department Head — Date 8/31/92

L. Richard Iorio — Field Investigations Officer — Date 9-1-92

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Revised 10/08/91
CompuLaw

U.S. Department of Justice

United States Attorney

Eastern District of Arkansas

Post Office Box 1229

Little Rock, Arkansas 72203

October 16, 1992
(Dictated 10-14-92)

Mr. Don Pettus
Special Agent in Charge
Federal Bureau of Investigation
#2 Financial Center, Suite 200
Little Rock, AR 72211

Re: RTC Referral No. C0004

Dear Mr. Pettus:

This is a followup to my previous meeting with you and my second review of the above referenced referral with supporting documents.

At the time we met, I explained to you my serious reservations about future prosecutions of the individuals involved in the referral. My evaluation of the referral indicates that there is not a prosecutable case capable of being proved beyond a reasonable doubt against any of the witnesses. While participation of some or all of these witnesses certainly suggests poor judgment, possible conflicts of interest or ethical infractions, proving specific intant or knowing criminal conduct would be a prosecutorial burden that could not be carried beyond a reasonable doubt.

The only allegations having any credibility worthy of possible deliberation for investigation exists against Mr. and Mrs. McDougal and Lisa Anspaugh. Even these allegations, combined with Mr. McDougal's previous acquittal, his present mental state along with no prospect of recovering lost monies from the institution have serious negative attributes for a successful prosecution of these insiders.

I am now advised that you have been ordered to do an immediate review to determine if an intestigation is warranted. As part of same, you are required to send a prospective proposal for such investigation by Friday, October 16, 1992. Such an order does not apply to this office.

However, I do believe it might be helpful to reiterate what I have told you previously. Neither I personally nor this office will participate in any phase of such an investigation regarding the above referral prior to November 3, 1992. You may communicate this orally to officials of the FBI or you should feel free to make this part of your report.

While I do not intend to denigrate the work of RTC, I must opine that after such a lapse of time the insistance for urgency in this case appears to suggest an intentional or unintentional attempt to intervene into the political process of the upcoming presidential election. You and I know in investigations of this type, the first steps, such as issuance of grand jury subpoena for records, will lead to media and public inquiries of matters that are subject to absolute privacy. Even media questions about such an investigation in today's modern political climate all too often publicly purports to "legitimize what can't be proven."

For me personally to participate in an investigation that I know will or could easily lead to the above scenario and to the possible denial of rights due to the targets, subjects, witnesses or defendants is inappropriate. I believe it amounts to prosecutorial misconduct and violates the most basic fundamental rule of Department of Justice policy. I cannot be a party to such actions and believe that such would be detrimental to the Department of Justice, FBI, this office and to the President of the United States.

In due time, I will be happy to meet with you to discuss a limited examination and possibility of proving some of the allegations regarding Mr. and Mrs. McDougal and Ms. Anspaugh. In the event I conclude that their case should be declined, which at this point is a distinct possibility, the DOJ can certainly override that decision and commit Department of Justice personnel and resources to both the investigation and prosecution of the case.

For your information, in the event I receive any press inquiry from any source whatsoever I am going to refer them to the supervisory officials in the Department of Justice and/or Resolution Trust Corporation.

Thank you.

Best Regards,

CHARLES A. BANKS
United States Attorney

CAB:bw

cc:

Floyd Mac Dodson
Executive Assistant U.S. Attorney

U.S. Department of Justice

United States Attorney
Eastern District of Arkansas

Post Office Box 1229
Little Rock, Arkansas 72203

EOUSA
RECEIVED
1993 FEB -1 P 3:35
OFFICE OF LEGAL COUNSEL

January 27, 1993

Ms. Donna Henneman
Office of Legal Counsel
Executive Office for U.S. Attorneys
Main Justice Building
Washington, D.C. 20530

Re: RTC Referral C0004

Dear Ms. Henneman:

This is a follow-up to my letter of October 16, 1992, which I believe was previously sent to you. If not, a copy is enclosed.

RTC officials have again contacted this office following an FOIA request upon them by some member of the Little Rock media.

RTC's contact with us was to determine the position of this office regarding their response to the FOIA request. Specifically, RTC wanted to know if a production of referral documents would affect our investigation.

The purpose of this letter is to clarify any possible confusion.

First, we have no investigation ongoing. Second, we have informed RTC of this and further suggested they should follow the appropriate FOIA law in responding to the request. I believe this RTC inquiry makes it appropriate for me to advise you as to the present status of the above referral.

Our position as related in the enclosed letter of October 16 is self-explanatory. As previously indicated, it seems prudent that a limited preliminary investigation of allegations pertinent to Mr. and Mrs. McDougal and Ms. Anspaugh should be considered. The taking of 302's from these individuals should determine whether there is merit to substantiate further investigation.

I believe this office has a conflict of interest in conducting an investigation or presenting an indictment against these individuals. Previous prosecution of Mr. McDougal and two other defendants resulted in a not guilty verdict. Several allegations suggesting political prosecutions were made during the trial. These were patently false but a second investigation/prosecution could easily give the appearance of inappropriate motivation by this office.

I would appreciate and expect that any decision of investigation, indictment, prosecution or declination be the responsibility of the Department of Justice. I have resigned my position as United States Attorney effective March 1, 1993 and am separating service with the Department of Justice that date. I will be happy to transfer the RTC workpapers or make them available for your review.

Best Regards,

Charles A. Banks

CHARLES A. BANKS
United States Attorney

CB/bw

000487

DEPOSITION OF ANTHONY MOSCATO
IN RE: S. RES. 120

THURSDAY, OCTOBER 12, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of ANTHONY MOSCATO, called for examination pursuant to notice of deposition, at 1:30 p.m. in Room 640–A of the Hart Senate Office Building before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, JR., ESQ.
Majority Deputy Special Counsel
GLENN F. IVEY, ESQ.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CHARLES J. SGRO, ESQ.
Counsel to the Deputy Attorney General
U.S. Department of Justice
10th Street and Constitution Avenue, NW
Washington, DC
On behalf of the Deponent.

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Witness	Examination
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EXHIBITS

Anthony Moscato

Deposition Number	Identified
Moscato Exhibit 1	3, 776
DOJ Exhibit 12039	21, 939
GRO Exhibit 001751	23, 940
DOJ Exhibit 12068	24, 941
DOJ Exhibit 006663 and companion document	31, 942
DOJ Exhibits 6690 and 6691	39, 966
DOJ Exhibits 6686 and 6687	39, 968
DOJ Exhibits 006664 through 006666	40, 970
DOJ Exhibits 6684, 6685 and 0210	42, 973
GEM Exhibit 000687	55, 976

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PROCEEDINGS

Whereupon,

ANTHONY MOSCATO

was called as a witness and, having first been duly sworn, was examined and testified as follows:

(Moscato Exhibit 1 identified.)

EXAMINATION

BY MR. GICALE:

Q Mr. Moscato, could you please state your name for the record.

A Anthony Moscato.

Q And your present business address.

A 5107 Leesburg Pike, Falls Church, Virginia. That's the office of the Executive Office for Immigration Review.

Q What is the phone number for that address?

A 703-305-0169.

Q And what is your present position there?

A I am the director of that organization.

Q And how long have you been the director

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there?

A Since July of 1994.

Q And prior to July of 1994?

A I was the director of the Executive Office for United States Attorneys.

Q And how long were you in that position?

A From October of 1992 to July of 1994, the first three months in an acting capacity.

Q Are you aware of the committee's document request to the Department of Justice dated August 25, 1995?

A Not specifically.

Q Did someone at the department ask you if you had any records with respect to this matter?

A I think we have been asked a number of times if we had records with regard to Whitewater and --

Q And Madison Guaranty?

A Yes.

Q And the criminal referral C0004?

A I don't have a specific memory of that. I do know there have been a number of requests for any

documents we might have.
Q Did you search for those responsive documents, notes, reports, memoranda?
A Yes, although I -- the Executive Office of Immigration Review, I think we have conducted that search once, but I don't think there was anything there. I had taken nothing from the former position that would relate to that, so I don't have any.
Q Have all responsive documents been produced to the best of your knowledge?
A Yes.
Q Did you speak with anyone other than counsel prior to this deposition with respect to this deposition?
A There are people in my office who know I have come to take it and my family knows I have come to take it.
Q Did you speak with them about the substance of this deposition?
A No.
Q This deposition is being conducted pursuant to Senate Resolution 120. The resolution establishes

a special committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation Madison Guaranty Savings & Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority and other related matters.

Section 1(b)2(c) of Senate Resolution 120 authorizes investigation and public hearings into whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation. This will be the focus of today's deposition.

You were requested to testify on October 5, 1995. This deposition is in advance of a proposed public hearing in either late October or November where you may testify.

We will be asking you a series of questions. Obviously you are testifying under oath. If you don't understand a question, let us know and we will rephrase it. If you need a break, let us know.

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The stenographer will prepare a record of questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings.

Prior to the hearings, you will receive a letter from the committee telling you that you may come to the Senate to review the transcript of your deposition and make note of any corrections for transcriptions on an errata sheet.

If you are called to testify at a public hearing, you will be permitted to have a copy of your deposition transcript four days in advance of your testimony. You may be represented by counsel.

Objections may be made as to the form of questions, and those will be noted for the record. Counsel may object on grounds of privilege or relevance. The committee chairman may rule on objections where the witness refuses to answer a question.

Now, Mr. Moscato, you have previously appeared before the Committee on Banking and Financial Services, U.S. House of Representatives, on

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July 12, 1995 where a deposition was taken at that time; is that correct?

A Yes, sir.

Q I'm going to show you what is marked as Exhibit Number 1, what looks to be a copy of that deposition dated July 12, 1995, before that committee with respect to Madison Guaranty Savings & Loan and with an attached errata sheet dated August 31, 1995 addressed to Tom Clark, senior counsel on that committee from yourself.

Could you please review this exhibit and tell us whether or not you have had an opportunity to review it and whether or not it truly and accurately reflects your testimony of that date and any corrections you subsequently made to it.

(Witness examined the document.)

A Without having taken the time to read through every page, it appears to be the document that was sent to me for review, and this is the errata sheet that I signed and sent back.

Q You previously did review that transcript --

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A Yes, I did.
Q -- of that deposition?
A Yes.
Q That was a sworn deposition before that committee?
A Yes, sir, it was.
Q Now, when you appeared before that committee, you testified to the handling of certain criminal referrals from the RTC that had come through the Executive Office for the U.S. Attorneys, Department of Justice, and you also talked about the recusal of Paula Casey with respect to those referrals and the Hale case, as I understand it; is that correct?
A That's I believe correct.
Q On page 66 of that deposition, you discussed -- you were discussing the meeting dealing with recusal on November 3rd, I believe, in Mr. Heymann's office.
A Yes.
Q And you were asked then, and I'm directing your attention to page 66, line 21, "do you recall

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being aware before you attended the meeting that Webster Hubbell had recused himself from all matters involving Madison Guaranty?"
Do you recall being asked that question?
A Yes.
Q Do you recall that your answer was "I must have been. Webster Hubbell has never been an quarter of an inch evident in any of this, so yes, I am sure it was, yes. I don't know."
Do you recall that answer?
A Yes.
Q What did you mean by saying that he had "never been a quarter of an inch evident in any of this"?
A In any of my dealing with Paula Casey as we brought her into the U.S. Attorney office, in any of the dealings concerning this meeting concerning recusal, Webster Hubbell was not a person. Nobody mentioned his name. He was not engaged in, he was not at that meeting. He was not an issue or a person involved in it.
Q He was not involved in this meeting with

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respect to this recusal issue?
A Nor in my memory do I ever recall anybody linking the recusal issue or Paula's handling of the case and Webster Hubbell.
Q Do you recall having any discussions with Webster Hubbell about the appointment of Paula Casey to her position as U.S. Attorney in Arkansas?
A No. I recall having a conversation with Webster Hubbell around Mr. Pence's interim appointment.
Q When would that have been, do you know?
A At the time that Mr. Pence's name was suggested by Mr. Banks, which would have been I guess before the Attorney General came on board.
Mr. Hubbell was the person with whom I checked and said Pence is the person we would like to go ahead with on an interim United States Attorney appointment.
Q And Mr. Hubbell was the person you had to check with and get consent from?
A I don't know that I had to. He is the person I did. We didn't have a -- what's the word

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I'm looking for. We really didn't have an Attorney General in place. We had an acting Attorney General, and Mr. Hubbell was there. I did check with him. Whether I had to is --
Q The acting Attorney General at the time was Stuart Gersen?
A Yes.
Q Prior to that time, who would you have checked with on the appointment of an interim U.S. Attorney?
A Normally the Deputy Attorney General or whoever -- I'm trying to think. We didn't have any lead during the time that I was there. We didn't have any interim appointment. But I did not have any conversations with Mr. Hubbell about Ms. Casey.
Q Just to go back on Mr. Pence. Why would you have gone to Mr. Hubbell as opposed to Stuart Gersen?
A I wouldn't go to the Attorney General on something like that normally.
Q Was he functioning as -- was he filtering information that would go through Mr. Gersen at that

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point, to Mr. Gersen at the point? Was he acting as an intermediary between Mr. Gersen and the rest of the department?

A Not on everything. I just thought this was an appropriate thing to check with Mr. Hubbell on.

Q Why?

A I guess because he was from Arkansas, it was a home state, home area and it was an interim appointment.

Q That conversation with him, did you have it in his office?

A Yes.

Q And do you remember the substance of that conversation?

A Just that Mr. Banks was leaving, we needed to appoint an interim United States Attorney, our recommendation was that it be Mr. Pence.

Q Did you discuss Mr. Pence's qualifications or have his resume?

A In the most general terms. I'm sure I said that it was Mr. Banks's suggestion and that based on my checks, he seemed to be a good person to do the

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job and that was the person we were recommending.

Q Did Mr. Hubbell express any familiarity with Mr. Pence?

A No, I don't recall that he did. He got back to me a day or so later and said fine.

Q Did he indicate he had to check with anyone before he got back to you?

A He did not.

Q Now, you say you did not have any discussions with him with respect to Paula Casey. Do you recall how you found out that Paula Casey would be coming on as U.S. Attorney?

A I guess by the time -- we were into the full -- the request for resignations had been made. We were busily --

Q The resignations of U.S. Attorneys in March of '93?

A Right, and we worked pretty directly with Nancy McFadden in Web Hubbell's office on those. Those names came through a different channel. Those -- Paula was not an interim appointment. That was a permanent United States Attorneys appointment

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that came out of the presidential selection process.
Q Didn't she serve in an acting capacity first?
A Sure, but attendant upon the fact that the nomination was going on.
Q So, how did you find out about her? Through Ms. McFadden?
A I'm pausing only to phrase this clearly enough. I don't specifically recall Ms. McFadden saying it will be Paula Casey, but that's generally the way I got information about U.S. Attorneys.
Q It would come through Ms. McFadden?
A Right.
Q Who worked for Mr. Hubbell?
A Right, and out of a White House process of selection.
Q Would you have contact with the White House on that?
A No. That was opaque in terms of those selections to me.
Q Do you know the extent the White House was involved in the decisionmaking?

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A I think it is an assumption on my part that it is a presidential appointment. I'm sure there were mentions to people being vetted in the White House and reviewed. I know there were.
Q How frequently would you talk to Ms. McFadden about the appointment of these U.S. Attorneys?
A Well, from the time of the resignations onward, we were engaged in a fairly constant process of identifying interim United States Attorneys, and those were often recommendations we would make, I would make, and then from there we segued into the process of having permanent appointees identified as well, and those would come from the department; again, from the White House, one presumes.
Q Would you say this occurred on a daily basis?
A If not on a daily basis, certainly on a frequent basis. We were about the process of arranging the departure of the U.S. Attorneys who had been asked to leave and the interim appointment of their immediate replacements and then the longer term

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and more permanent selections.
There was often in there just to -- I don't know if "complicate" is the right word, but often another appointment process because the interim appointment authority of the Attorney General is a 120-day appointment authority. In a number of cases that 120 days ran out.
The next appointment is a court appointment made by the district court. We would often have to engage with the court on whether they would make the follow-on appointment of the interim United States Attorney who had been appointed by the Attorney General.
In most cases they did but sometimes they didn't.
Q Do you remember particular discussions with Ms. McFadden about the appointment of Paula Casey to her post?
A No, no specific separate kind of discussion around Paula.
Q And again, this would be oral, not in the form of a memorandum or anything?

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A Yes. There may have been some paper around this, but most of it was oral.
Q Do you recall when you discussed the appointment, when Ms. McFadden told you that Paula -- how would it happen?
A Ms. McFadden might say about any presidential nominee that this person had been identified as a potential appointee and the Senate would have been involved in that in most cases as the senior senator or senator from the state.
So, once we had a name identified, the next step was in fact to get documents from the potential appointee or nominee that they had to get filled out and then we needed to run a full background investigation on them by the FBI and financial check and tax, a whole range of checks with which I'm sure you are familiar.
So we would be given the name and a contact point and we needed to get started doing that.
Q So she would have a list of the districts and say okay, here is our name for --
A Whether it was --

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Q -- Arkansas --
A Or Pennsylvania or New York. This was a constantly moving process as Republicans departed, interims were appointed and new people came on board.
Q She would basically give you a name and you would start the process of the paperwork?
A Yes. Sometimes there might be three or four we would have to start on and others would fall out as we went, sometimes two. It was a sort of a -- we met often. I don't think it was daily. It was at least weekly, probably sometimes more often than that. I would go up with interims. She would give me the next batch to move ahead or the next individual.
Q Do you know when she gave you Paula Casey's name?
A No. I really don't.
Q Spring or summer or how long before she was put in as an acting?
A My memory is that she was -- I could go back and refresh my recollection on dates you would

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like. We probably got it in summer, but I could be wrong about that. I want the say early rather than late. By early, I mean spring-summer rather than fall. My early memory is for instance Mary Jo White and Zach Carter, eastern and southern New York were almost the first two along with Jay McCloskey from Maine, maybe the first three.
I don't think Paula was in that first batch because Senator Moynihan wanted to get there quickly. I don't think she was terrifically late either. I don't know if you want more detail on this. We were handling a lot of people moving through.
Q When you discussed Paula's designation with Nancy McFadden, was there any discussion with respect to the criminal referral --
A No.
Q -- regarding Madison?
A No.
Q Or Whitewater?
A No. We would have handled Paula exactly the same way we handled everybody.

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Q Did you ever have any discussions with Nancy McFadden regarding Whitewater or Madison?
A No.
Q Or that particular criminal referral?
A No.
Q Did you have any discussions with Webster Hubbell along the same lines?
A No.
Q With respect to Whitewater or Madison or that referral naming the Clintons as witnesses?
A No. I'm giving you individual noes. I don't know how you want me to.
(DOJ Exhibit 12039 identified.)
BY MR. GICALE:
Q I'm also going to show you a number of message slips. The first one is Bates number 12039. It is to Webster Hubbell from Tony Moscato, designation of an interim U.S. Attorney. It says "would like to meet you sometime today on this matter" and it is dated 2/16.
Do you have any independent recollection of that?

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A My only recollection of talking to Webster Hubbell about an interim United States Attorney was around Richard Pence.
Q 2/16 would have been about several weeks before --
A Before Chuck left.
Q Before all the U.S. Attorneys were told to leave.
A No. Again, Chuck Banks left in advance for the request for resignation. Chuck was gone, my memory is, on March 1st, or right around March 1st, he made his decision to leave. I don't think he was the only one. He made his decision to leave in advance of being requested to leave. The question of his interim successor came up in advance of that.
Had you asked me when I talked to Web Hubbell about Pence, I guess off the top of my head I would have said around the end of February, beginning of March, because that's when Chuck was leaving.
It is entirely possible that since Chuck did this in an early orderly fashion that we talked about the replacement earlier and I raised the

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question for Web Hubbell earlier. I don't know. I'm trying to reconcile a 2/16 date with my memory that I didn't have any occasion to talk to him about any other interim United States Attorney.

(GRO Exhibit 001751 identified.)

BY MR. GICALE:

Q I'm going to show you another document Bates stamped GRO 001751, which is another message to Judge Hubbell -- to --

A It is to Web Hubbell from me.

Q Dated February 18. It is a 4:10:00 p.m. message. Do you know what that message would have been about?

A Unless it was a follow-up of some kind on the 2/16, no.

MR. IVEY: What was the Bates stamp number or the number at the bottom?

MR. SGRO: It was identified as GRO 001751. However, the Bates stamp number is cut off on this copy. It appears to be 12000, something, 52 or 3. I can't tell from this copy. It is half cut off.

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(DOJ Exhibit 12068 identified.)

BY MR. GICALE:

Q I'm going to show you one other message, there is no date on this, to Tony Moscato. The Bates number is 12068. These come from Webster Hubbell's logs.

A Well, I don't know. My phone number was 514-2121 as director of EOUSA. I just don't know what this is.

Q Did you have one or several conversations with him with respect to Pence?

A Pence, my memory on Pence is two, one in which I raised it and one in which he told me to go ahead. My memory is a couple days apart, a day or two.

MR. IVEY: Can I see that one?

MR. GICALE: Sure.

THE WITNESS: I had other --

BY MR. GICALE:

Q Go ahead.

A I had other contacts with Web Hubbell.

Q Okay. I would like to -- what other

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contacts did you have with Webster Hubbell?
A Entirely unrelated to appointments or anything. I just -- they were work contacts.
Q What contacts would they have been? He came in just after the inauguration, correct, in January of 1993?
A That sounds right. Zoe Baird was the firm nominee for Attorney General. She ran into trouble. So Stu Gersen was asked to stay on as acting Attorney General. At some point in there I sort of saw Web Hubbell at the first departmental meeting. I don't know what date that was.
Q Did Mr. Gersen introduce him in some capacity to the group?
A Yes.
Q How was he described in terms of his function?
A The first time I saw him was at sort of a department staff meeting that acting Attorney General Gersen had and it would have been Web Hubbell is here from the new administration. Whether he said from the new administration or from the White House, how

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he characterized it exactly I don't recall. It would have been something like that. I don't recall him having a specific title in the department. It is just sort of he is here.
Q As the representative of the new administration?
A Again, those are your words. I wish I could find you words. I really can't remember. It was clear he was from the Clinton Administration and he was there to help, work, coordinate, pick a word.
Q Was there anyone else introduced in that fashion?
A If there was, I don't remember another one.
Q Was Nancy McFadden introduced at that point?
A I don't remember it. I don't think in that meeting.
Q Subsequent to that meeting, what dealings did you have with Webster Hubbell?
A None that I recall in the early period. But when he became Associate Attorney General and

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responsible for the sort of litigating divisions of the Department of Justice, I know we had contacts. I am frankly hard put to try to tell you what the specific issues were. And they weren't frequent. But I do recall meeting with him on a couple of occasions.

Q Were they with respect to individual cases?

A No. Concerns that U.S. Attorneys might have about a particular procedure or particular process or relationship with a given legal division, that kind of thing.

Q So, did you ever have a discussion with him about a particular case?

A No. It is not sort of -- it is not a normal event for the director of the executive office to have discussions about specific cases. It is not what the director of EOUSA does.

Q You did, however, in the Executive Office for U.S. Attorneys have copies of these particular criminal referrals attached to a sensitive or urgent memo that had been sent along in October of 1992.

A I guess that was the first one.

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Q There were several, October 7 and October 20th; correct?

A I don't remember the dates. I will accept those. One was clearly before I came and signed by Larry. I don't know if the second one was signed by me or Larry. I think I signed one, but I don't remember which it was. If you show me -- the one on the 7th of October would have been signed by Larry. The 21st might have been signed by me.

Q 20th.

A 20th. But probably not. I thought I got there like the 23rd. So Larry signed the 7th and the 20th. I thought I remembered that.

Q Those records, and then there came a time in January of 1993, January, late January, beginning of February, where there were some discussions with Mr. Banks about recusing his office from the case. Do you recall that?

A Yes. Discussions. He sent a memo up asking for the department's -- I think that is in this deposition. He sent a memo up asking for the department's response. He basically wrote and said I

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have brought this case once, the defendants were acquitted. If I bring it again, it is going to appear politically driven, I want some advice, guidance, what do you think I ought to do. That was the text and tone of the memo to the department.

Q It was as a result of that that you sent a memo to Doug Frazier?

A Was it to Doug? I guess it was through Doug to Gersen.

Q To Gersen.

A Because Doug was at that stage of the game sort of the last remaining person in the deputy's office.

Q Do you know whether or not those papers or copies of them went to Webster Hubbell?

A No, I don't. I didn't send them to Webster Hubbell. I don't know whether they ever did or not.

Q Did he have any access to them through your own office?

A He never asked me for them. We never sent them to him. He would have no access to them. The only reason I'm pausing is -- may I ask a question?

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Do we have a date for when Webster Hubbell became the Associate Attorney General?

MR. GICALE: Off the record.

(Discussion off the record.)

THE WITNESS: There was a standard distribution list for urgent and sensitive. The whole point was to alert senior managers in the department that there was something going on at a U.S. Attorney's office that was potentially of interest to them, might be news media worthy, something like that.

My memory was clear the AG always got him, the deputy, because the deputy typically had the criminal prosecution responsibility in the department system. Public affairs I think pretty typically got them because again it was a potential public affairs issue.

For the rest, I don't remember if the associate was on the list. I think the associate would have been on the list for certain things that had to do with whatever the associate's area of responsibility was. I do not -- it is my belief if

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we are talking about January, in that time frame, when we sent it up that it wouldn't have gone to Web Hubbell, but I can't be drop dead certain of that.

MR. IVEY: Did we ever identify those two documents by number for the record, if there is a number on them?

MR. SGRO: The memorandum dated October 20th is Bates stamped 006663. The October 7th, 1992 memorandum, the number has been cut off. So I don't have a Bates stamp number on that.

(DOJ Exhibit 006663 and companion document identified.)

THE WITNESS: But that was -- that was basically a request for advice from the Deputy Attorney General. I don't think it would have gone, and it was a semi recusal. I don't recall it saying no, I don't want to do this. It made it very clear it was looking for advice from the department.

BY MR. GICALE:

Q Do you have any understanding as to why Webster Hubbell recused himself from the investigation of matters related to Madison, or David

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Hale?

A Any understanding I have would be my speculation. Nobody ever told me.

Q When did you learn he had been recused?

A I don't recall.

Q Was it prior to the meeting of November 3rd dealing with Paula Casey's recusal?

A I don't know. I'm assuming so, but I don't know.

Q Was his recusal the subject of discussion at that meeting, the Paula Casey meeting?

A I don't recall it being the subject of discussion at that meeting.

Q Did you ever discuss recusal with Mr. Hubbell?

A No. I guess that's what led me to that statement. He just wasn't evident in this issue.

Q Are you aware of any discussions between Paula Casey and Webster Hubbell relating to the criminal referral C0004 from the RTC related to Madison Guaranty and Whitewater?

A No.

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Q Were you aware of any discussions between Paula Casey -- strike that.

Are you aware of any discussions between Hubbell and the White House with respect to this referral?

A No.

Q Are you aware of any discussions between the White House and Paula Casey with respect to this referral?

A No.

Q When was the first time you became aware of the issue surrounding the investigation of David Hale?

A That's a hard -- I don't know. There was public reportage and maybe there. I do know and again mentioned in deposition that certainly the call from Paula Casey on a Sunday morning that the New York Times reporter was looking into that issue brought it to the fore.

I can't now tell you if I had a separate earlier -- I'm sure I had an awareness because I think it was being reported. But other than that,

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no.

Q Did you or anyone in your office have any contacts with any present or former employee of the White House relating to the criminal referral C0004 which is the RTC criminal referral with respect to Madison and Whitewater?

A I have had no, not then nor since, meetings with current members of the White House, no former ones. I don't know of any that any member of my staff -- and I presume by that you mean the EOUSA staff -- had with any member of the White House.

MR. GICALE: I have nothing further.

THE WITNESS: Can we go off the record?

(Discussion off the record.)

EXAMINATION

BY MR. IVEY:

Q Good afternoon. My name is Glenn Ivey. I'm with the minority on this issue. I recognize that you have been deposed on this, but there are a couple matters I wanted to just flesh out a bit if I could. Before I get to that, I wanted to pick up on the last point with respect to lack of contacts from

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the White House.

Generally speaking, was the way the executive office that you directed -- did the procedures change with the change in administrations? Did you run the office differently in 1993 than you did in 1992?

A You recognize that is a very broad question. I am going to give you a nonrambling, nondiscursive answer. No, in general they did not, period.

But we were, with the request for resignations by U.S. Attorneys, engaged in a whole different range of activity than anybody had been through for the 12 years prior to that, and that was ushering in a new group with interim appointments. And that was a sort of activity.

In terms of the way we ran the office between December of 1992 and February 1993, no.

Q With respect to in particular the way recusals were handled, was there any change in that process at all?

A There wasn't a -- I think this gets touched

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on a little in the deposition. There wasn't a formal change in policy that I recall. However, there had been an evolution of a process for recusals which involved a preference as to who you would recuse to, and the blue sheet, which is the sort of governing instrument of the U.S. Attorneys manual, sort of laid out a process which involved, first of all, getting the deputy's approval for any recusal. That remained the same in the new administration.

But a preference for recusing downward, the U.S. Attorney might recuse, but if it was possible to recuse to the first assistant and could be handled that way, fine. In the next case you might look to a neighboring United States Attorney and see if you could recuse the office but if it could still be held there.

I think as I noted in this deposition, there was a time when Joann Harris, who is the head of the criminal division -- and I will note the criminal division historically has always been consulted on recusal matters, if not on every one, certainly on many -- I think when she spent some

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time, Ms. Harris, as the acting deputy in between Phil Heymann and Jamie Gorella, she had a chance to look at the recusal processes because she was getting them.

More after that we saw recommendations that the recusal go to the criminal division. I think that simply reflected a policy choice that said this is one of the things the criminal division does and it is a good thing to do so why don't we do more of that.

That changed. I don't know if it changed in any formal sense. We began to see the decision shift.

Q So, criminal referral C0004, was that handled -- to what extent was that handled differently?

A I think criminal referral C0004, if that is what we are talking about, would have predated that shift, because Joann Harris -- Phil Heymann was still there, so we wouldn't have seen that.

Q I know you testified about sort of the movement of the referrals in your deposition. I was

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wondering if you could sort of give me a summary, sort of an overall of what your understanding of how that referral, C0004, moved through the Department of Justice, to the best of your knowledge.

A Can we be a little clearer about what C0004 is? Let me be sure I give you the right answer here, at least the best answer I can give you.

Q The referral that Banks wrote a letter about.

A Is that the one?

Q Yes. Let me see if I can get the letter for you.

A If that's it, that's fine.

MR. GICALE: Can we go off the record?

(Discussion off the record.)

BY MR. IVEY:

Q Have you ever seen the referral? My recollection is you didn't recognize it. I don't object to you seeing it if you want to.

A I don't care, to be perfectly honest.

Q Why don't you go ahead and answer. I wanted to give you the Banks letter. These are Bates

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stamped 6690 and 6691. This is an unsigned copy.
(DOJ Exhibits 6690 and 6691 identified.)
(Witness examined the document.)
THE WITNESS: This is the Banks letter to the FBI. There is another one. There is another one.
(DOJ Exhibits 6686 and 6687 identified.)
BY MR. IVEY:
Q This is the January 27th letter to Donna Henneman, which is Bates stamped 6686 and 6687.
(Witness examined the document.)
A Maybe this is the one I remember. I thought there was one that went to the deputy or to the criminal division. Or is this the one that ultimately ended up there?
Q My recollection is that this referral came from the RTC to the U.S. Attorney's office in Little Rock, September 1992.
A The date I don't know. But this referral -- I think the referrals typically went --
MR. GICALE: Can we go off the record?
MR. IVEY: Sure.

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(Discussion off the record.)
THE WITNESS: This referral went from RTC to the U.S. Attorney's office. That is my understanding of how it got there.
BY MR. IVEY:
Q Let me ask this question. It came to the U.S. Attorney's office because of the issue of recusal?
A No. That's a standard way for --
Q I'm sorry. It came to the Department of Justice, main Justice, because of the recusal issue?
MR. GICALE: At what point in time are we talking about?
BY MR. IVEY:
Q October 16, with that letter.
MR. GICALE: 1992.
BY MR. IVEY:
Q If I could have the Bates number read.
MR. SGRO: 006664 through 006666.
(DOJ Exhibits 006664 through 006666 identified.)
THE WITNESS: Yes, basically.

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BY MR. GICALE:
Q Could you ask that question again in terms of the time so I understand.
BY MR. IVEY:
Q The referral came to main Justice from the U.S. Attorney's office in Little Rock because of the recusal issue?
A I believe that to be the case.
Q Is that the letter? Would that be the time frame of when the referral came to main Justice?
A I thought there was a letter which basically says essentially what these say but that said fairly clearly I tried this once, I lost, if I try it again, it may be perceived to be politically motivated, I would like your review, advice, guidance, direction, words like that.
Maybe this is the one. Yes. I guess the one to Donna on January 27th basically says that, says "I may have a perceived conflict of interest and I would appreciate and expect that any decision of the investigation indictment prosecution be the responsibility of the Department of Justice." I

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think that is the letter wherein he is looking to the department for its response.
I guess this is it. I had forgotten it had been addressed initially to Donna. I guess we treated it as a recusal and sent it up.
Q Now, I believe you drafted two memoranda with respect to this. One is dated February 9, 1993. That is through Frazier and for Gersen, Bates stamp 6684, 6685. The second would be dated December 1, 1993. This is from you through Margolis for Heymann. Those are Bates stamped 0210, it looks like.
(DOJ Exhibits 6684, 6685 and 0210 identified.)
(Witness examined the document.)
THE WITNESS: Okay. Yes, I remember both of these.
BY MR. IVEY:
Q Do they sort of trace through your understanding of what had happened with these referrals, how they moved through the department?
A Yes. I should note, my earlier response it

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went from the RTC to the U.S. Attorney's office. The vast majority of cases that go to the U.S. Attorney's office, 88, 90 percent range and above come from the local investigative agencies. They do not come to Washington and then go back. They go across. So RTC referred, but so did every local agency, the local FBI, local DEA goes to the U.S. Attorney's office in a given district. That is standard across the country.

Q With respect to the time frame of the referrals and the time they were at the Department of Justice and before they went back to the U.S. Attorney's office, I believe you testified that it was maybe a little longer than normal but not unduly so.

A With regard to which?

Q I'm sorry. C0004.

A I think -- as I recall --

MR. GICALE: Are you referring to his testimony?

THE WITNESS: If you are talking about the deposition, it was with regard to the difference

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between December 1, 1993 and December 22, 1993 on this document which was Paula Casey's recusal.

MR. GICALE: You are referring to Bates number what now?

THE WITNESS: 000210. I think that's where I said it. But if you would check or if you would like to refer, I will look.

BY MR. IVEY:

Q 0210? Is that the document?

MR. GICALE: What pages?

MR. IVEY: 96 and 97 of your deposition.

THE WITNESS: I'm sorry. Can I?

MR. GICALE: Yes.

BY MR. IVEY:

Q The page number is referred to on line 14 of page 96.

A Okay.

(Witness examined the document.)

Yes. It was about this three-week time frame that I was speaking.

Q Did you have any knowledge about what happened to the referrals after you wrote that

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memorandum?
A I think, yes.
MR. GICALE: I just object. This was with respect to the recusal, and which referrals are you talking about at this point?
MR. IVEY: C0004.
MR. SGRO: Off the record?
MR. IVEY: Yes.
(Discussion off the record.)
BY MR. IVEY:
Q The referral I'm trying to see if I can get you to track is C0004, which would have come to the department, the main Justice, it looks like October 1992 at some point.
A Chuck sent up the letter saying basically I'm not about to move on them, you tell me what you want to do. We sent the memo out through Doug Frazier to the Attorney General. That was evidently, and again, a fairly standard practice, referred to criminal division, because there is a later memo with regard to that referral I believe from Jack Keeney for the criminal division -- and I don't remember the

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date of it -- in which Mr. Keeney I believe said he didn't see a ground for recusal, but as far as he was concerned, a declination to prosecute was within the range of acceptable alternatives.
Those are my words. Those are not his.
Q Yes. What happened with it after that, to the best of your knowledge?
A I don't know.
Q Do you know if at some point this referral was sent back to the U.S. Attorney's office in Little Rock pursuant to the Keeney memo?
A I think it was. Do I know it? No. It was our normal -- we would have. The office had written asking for a response, and we would normally refer back the response. In this case, the response was no, we don't think you can recuse. This may be the -- it may have gone back.
Q Is there some mechanism for the executive office to notify one of the U.S. Attorney's office of a recusal coming back?
A Yes.
Q What is the mechanism?

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A Through the counsel's office.
Q Through the counsel's office?
A The office of legal counsel within the Executive Office for United States Attorneys.
Q So that would have been -- I take it Donna Henneman was in that office?
A Donna Henneman was in that office. Deborah Westbrook was the counsel. Between them they would have gotten it back to the U.S. Attorney's office.
Q Were they normally notified in writing or by phone?
A I think it depended actually. Here we had a writing. They might have sent it back. Very often they would have done it by phone. Very often the request for recusal would have come in and been approved, and you pick up the phone and say fine, you are recused out, it will be handled by so-and-so. These are often very quick and I don't think there was a lot of paper in many of them.
In this case we had a written opinion in which Jack Keeney expressed -- I presume we would have sent it back.

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Q Sent the whole package back as opposed to doing some special document?
A I will stop at that stage. I just don't know what was done.
Q Let me ask you about the November 3rd meeting.
A Did you want these?
Q Yes.
Now, I take it that prior to that meeting, the meeting I understand was in Mr. Heymann's office?
A Yes, sir.
Q Ms. Casey was in Annapolis for some sort of orientation?
A The same orientation we tried to give all the U.S. Attorneys. We took them 10 to 15 at a time. Do you want this?
Q A little bit, sure.
A Brought them to Annapolis, spent three days taking them through some very basic how to be a U.S. Attorney kind of stuff, where the reference materials were, what their resources were, how to work with local investigative agencies, what the department's

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policies were.
At the end of that, we would bring them into the main building and set up some interviews with heads of components for them so they would be able to meet the head of criminal, civil, tax, all the legal divisions and the other appropriate people and then send them home.
Q Were you in Annapolis?
A I would go to Annapolis during those three days. These were handled -- what you would most have liked is to have them handled by experienced United States Attorneys. Unfortunately, our experienced United States Attorneys had left.
We were handling them with experienced assistant United States Attorneys who had been acting or interim United States Attorneys, people like Russ Dedrick and Wayne Rich and Doug Frazier.
Q Did you come to Washington with Ms. Casey?
A Yes, I did. On that day I had gone out to do a piece of the training and Paula looked at me that morning and said that she had been invited to a meeting at the deputy's office at 2:00 that

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afternoon.
Q Did she say why she was invited?
A She thought it was going to deal with the recusal on Whitewater. I gather Jack Keeney called her sometime earlier and in her view demanded she recuse. She was feeling a little hostile about that and hadn't yet. I offered to go with her. She looked grateful, simply because again she is a brand-new U.S. Attorney and she figured she was going to be meeting with the deputy and others and I think I would like to think most of the U.S. Attorneys saw me as their support and advocate. I certainly tried to be.
Q You said the recusal on Whitewater.
A I'm sorry. A generic term.
Q Recusal related to these Arkansas claims?
A Exactly.
Q Did you discuss her thinking on the way to Washington?
A I don't remember if we discussed it. We must have.
MR. GICALE: Off the record for a second.

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(Discussion off the record.)
THE WITNESS: The issue was recusal from all of that.
MR. GICALE: All of what?
BY MR. IVEY:
Q You can answer.
A From anything associated with this case. It was not -- she had a sense it wasn't going to be parsed down referral or referral or issue by issue. It was rather the generic question of whether she should refer out. That certainly was the tenor of the discussion.
We must have talked about it because I knew how she felt, and it was, as I think I noted in this deposition, she felt she was brand-new to the job, she hadn't done anything improper to date or at all and was handling it well, she was a new U.S. Attorney, was there a reason for her to recuse. I think in her view since she was the United States Attorney -- not I think, I know, because she said this.
Since she was the U.S. Attorney in Little

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Rock, was she going to have to recuse any time anyone said the name Bill Clinton. I think her claim was if at this early stage she had to recuse out simply by virtue of that name being tossed, she might as well expect to recuse out half her case load. It was severely going to hamper her capacity to conduct her job. She felt strongly about that.
Q Did she discuss the issue of recusing downward? In other words, she might recuse herself but she had concerns about the issues staying within --
A We didn't get there. We didn't talk about that level of detail, I think because she had a sense that the issue was going to be recusing through Washington or recusing to the criminal division.
Q Did she mention that her top assistants were concerned about the recusal issue at all?
A If she didn't, I don't remember it.
Q Do you recall if she said anything about it at the meeting?
A I don't recall any discussion of her top assistants. That doesn't mean there wasn't. I just

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don't remember.
Q At the meeting, I think I recall from I believe it was your testimony that Mr. Keeney was present and Ms. Harris was present. They sort of presented the concerns that the Justice Department had?
A I thought about this and was reviewing this preparatory to coming. I know Joann Harris was there. I am very clear that Phil Heymann was there. I am clear about Jerry McDowell and Joel Gangloff, who were public -- Gangloff was a public integrity guy. I want to say McDowell was fraud. I think Irv Nathan was there.
The people I'm not sure about are Dave Margolis and Jack Keeney. I can't see them in my mind's eye as they sit around the table. They may have been there.
Q Representatives from the criminal division?
A Yes.
Q Did they take mainly about Hale and apparent allegations that he was going to make or might direct towards the Clintons?

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A Hale may have -- I think Hale -- no, I'm going to answer it this way. I do not now recall which specific issues, which referrals, whether Hale or not, were specifically discussed and to what level of detail. The core issue was around where this case would be perceived to be better handled. There was not an assertion that it couldn't be handled in the U.S. Attorney's office as a matter of capacity, talent, ability, independence, whatever.
The core of the discussion was in light of the concerns raised in this case, are you, Paula Casey, U.S. Attorney from Little Rock simply just battling up hill because the perception is you know Bill Clinton, you have a personal relationship with Bill Clinton, you are his appointee, wouldn't it be better from a public perception point of view if you just recuse out and we remove this to Washington.
There was a recognition in the discussions that went back and forth that yes, there were other people in the room who were selections of Bill Clinton, President. Certainly the Deputy Attorney General and the head of the criminal division. The

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point was made and clearly, look, we are but we are not personal acquaintances, in the friends, not perceived to be as close as you, Paula.

The issue was around in light of these facts, what's the best way the handle this, how does the department get this done.

(GEM Exhibit 000687 identified.)

BY MR. IVEY:

Q After this meeting, two days later, Paula Casey wrote a letter to Phil Heymann in which she asked to recuse herself. The Bates stamp number is cut off. The other number is GEM 000687. Let me hand that over the you.

(Witness examined the document.)

In that letter, what is the reason she gives for -- what are the concerns she raises for recusal?

A Whether her participation and the participation of her staff raises questions of the appearance of impropriety.

Q Are the concerns that she raises in that letter consistent with what she discussed at the

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meeting?

A Look at the sentence before it. She says very clearly "I am confident that I and my staff are capable of investigating these matters competently and dispassionately." That was her position and still is, I'm sure. The next sentence says essentially I recognize the points that were made.

Q She says in the first paragraph, she mentions the indictments with respect to Mr. Hale and that "Mr. Hale claims to have information implicating other people in fraudulent activities which are not related to the matters in the September indictment." Was that discussed at all in the November 3rd meeting?

A I don't recall any discussion of that.

Q Let me hand you -- I think we are back to 0210, which I believe is a memo that you wrote.

A I want to go back to that answer.

Q Okay.

A It is possible that Paula would have said something like this guy is throwing Bill Clinton's name all over the place. A statement like that would

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fit under the rubric of your question.
Q Do you know if at that meeting on November 3rd David Hale made any sort of proffer?
A I don't remember. I just don't remember.
Q Take a look at the memo there.
A Okay.
(Witness examined the document.)
Q In your memo you talk about the Clintons essentially and Ms. Casey's relationship with the Clintons as essentially the basis for her recusal. In your mind, how does that link up with the November 5 letter?
A It is the same point. I might have written it differently in this one, and I might have made this one conform to this one or Deborah who probably drafted it. We were trying to say the same thing, that there is the potential appearance of impropriety here and on that ground we agree Ms. Casey should recuse.
Q Do you know if Ms. Casey ever discussed concerns as the basis for recusal her relationship with Jim Guy Tucker or Stephen Smith? I mean

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discussed, I mean in your presence.
A Did I know that she knew them? Yes. I think she told me that. But discussed in what way?
Q As a basis for recusal with respect to these referrals.
A Is your question that her relationship with them would have been an additional part of her basis for recusal?
Q Or a part.
A I don't know. She was, as I noted, reluctant to recuse in the first instance, brought to it by her sense of judgment about what the perception was going to be. I think -- I would be speculating if I tried to answer that, so I'm not even going to. I think the concern was principally around, if not solely around the appearance of impropriety arising out of her relationship with the President and Mrs. Clinton.
Q Your memo, you said something in there about the Clintons may have some knowledge about loan and check transactions which are the subject of these cases. What was the source of that?

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A I don't recall.
Q Do you recall if you had looked at the referrals at all? These would be the nine referrals.
A I had not. To the extent they would have been looked at, it would have been in counsel's office.
Q Do you recall talking to Paula Casey before, just before Hale was indicted?
A I talked to Paula Casey as I talked to a lot of the new U.S. Attorneys on a fairly constant basis. So, I'm sure I talked to her -- my problem is I can't remember when Hale was indicted so I'm having a hard time.
Q Did she ever call you the talk about the indictment of Hale?
A When we talked from time to time, and we did, she would sometimes mention Hale, but that was it. We were not -- she was not seeking advice and guidance and I sure -- I would not have proffered any on the conduct of the case.
Q Because that is not the role?

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A It is not my role. If you are going to get counsel with regard to a case and the conduct of the case and you are an United States Attorney, you get it from the Deputy Attorney General or one of the six legal divisions.
Q During those conversations, even though she wasn't necessarily calling for advice, did she mention how the negotiations were going?
A I recall her mentioning Hale a couple of times, but nonsubstantively. I don't remember any great degree of detail. It might have been sort of God, this case is driving me nuts or something, literally something like that.
Q Did she ever mention anything about plea negotiations that you can recall?
A Again, if she mentioned them, it would have been in passing. It wouldn't have been in great detail or specificity. The reason I'm being so specific about that is with all the new United States Attorneys, we worked very hard to make sure they knew where to go to get advice and guidance. A lot of the answers to phone calls were call this person, call

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that person, if is a lands case or environment case, call this person.

Q Did you ever become aware of Jean Lewis calling your office?

A Yes.

Q How did you become aware?

A Evidently she was calling either Donna Henneman or Deborah Westbrook to inquire about where the referrals were and why I guess in her view they weren't moving. I had a conversation, maybe two, with Deborah Westbrook about that, and Deborah indicated to me what they told Ms. Lewis was that Mr. Banks had left, that Mr. Pence was interim and that they, we, EOUSA, the counsel's office would hold any materials she sent, and Ms. Lewis evidently was sending us stuff and give it to the new U.S. Attorney when he or she came on board and that would trigger a rereview.

Q Do you know how many times Ms. Lewis called your office?

A I don't.

Q Is it fairly unique to have investigators

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calling your office to track down referrals?

A Yes. Unique, it is not unique. It is not the normal course of events. Again, I don't want to be repetitive, but I will note, in U.S. Attorneys offices, that is where everything comes to the center. I mean, every agency in government is moving referrals into a U.S. Attorney's office, the FBI, DEA, INS and the other 70 agencies with criminal enforcement activity, and we have something on the order of 100 agencies who have civil suits brought for defendant.

The place where that happens is the U.S. Attorneys office. I always assume that anybody who walks into a U.S. Attorney's office to ask for that litigation or prosecution thinks they have a case of merit. Very often the U.S. Attorney is unable to bring the case or defend it because of a lack of resources. I'm not necessarily saying Jean Lewis fell into that category. It is not unusual for us to hear from disgruntled agencies saying my case isn't getting handled. The answer to that is it is within the purview of the individual United States Attorney

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the handle it. It is his or her set of decisions to make.

Q Did you ever talk to Donna Henneman about phone calls that she was getting from Paula Casey?

A I don't recall that. I wouldn't. If it were serious, I would presume I talked to Deborah Westbrook about it rather than Donna Henneman.

Q Do you know if Donna Henneman spoke with Paula Casey during your tenure?

A I don't know. I can think of a number of issues Paula Casey might have called that office about, but I don't know.

Q I don't want you to speculate.

Briefly, one last set of questions. The contacts that you had with Nancy McFadden with respect to interim U.S. Attorneys and presidential appointments for those positions, was there anything unique in the conversations you had with McFadden with respect to Paula Casey?

A I cannot remember the specific conversations around Paula, so I have to say there was nothing unique about that.

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Q Was the way Paula Casey's nomination handled by your office or the Department of Justice essentially the same as the way all the others were handled?

A Yes.

MR. IVEY: I don't have any other questions at this time.

EXAMINATION

BY MR. GICALE:

Q To follow-up on Mr. Ivey's question to you about whether or not Paula Casey mentioned her relationship with Mr. and Mrs. Tucker in the process of discussing recusal, do you recall her saying that she knew the Tuckers in these discussions about whether or not she should recuse herself from these cases?

A Can I take two parts of the question?

Q Sure.

A I have the sense that I think Paula at some point said that she did know Mr. Tucker. Whether it is within the context of the recusal discussion I don't know.

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Q As related to that, do you recall whether or not she ever stated that she had a house guest who had a relationship with an individual named in the referrals by the name of Seth Ward?
A I don't remember that.
Q In the context of discussing the recusal issue.
A I don't remember that at all. Boy, that would have -- a house guest I would have guessed I would remember.
Q Do you know why her initial letter on recusal was sent to McDowell as opposed to you?
A Paula's initial recusal letter?
Q Didn't she send a memo or letter to McDowell? Or it was sent to Heymann.
A It could have been sent to me. Evidently she chose to send it to Phil.
Q One last thing. With respect to the process of confirmation of these U.S. Attorneys, once you process the paperwork, start processing the paperwork, who is their contact in terms of -- who is the U.S. Attorney who is the subject of this

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nomination process, who is their contact with respect to where they are in that process?
A Depending on the degree of frustration any of them felt at any given time because very often this process took forever in their view, they would call me. Most of them did call me on a regular basis. If they got really frustrated, many of the U.S. Attorney candidates knew people in the White House. They would call them. Many knew folks in the Department of Justice. They would call them.
If they really got tired and angry and frustrated they would call anybody they could reach. A lot of candidates do because it is a very large process. If they wanted to know where they were in the queue, a status check, they would call me and I would tell them.
MR. GICALE: I have nothing further.
(Whereupon, at 2:55 p.m., the deposition was concluded.)

ANTHONY MOSCATO

CERTIFICATE OF NOTARY PUBLIC & REPORTER 67

I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Brenda Smonskey
Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 14, 1996

U.S. Department of Justice

Office of the Deputy Attorney General

DEPOSITION EXHIBIT 1 Moscato

Washington, D.C. 20530

August 31, 1995

Tom Clark
Senior Counsel
Oversight and Investigations
Committee on Banking and
Financial Services
U.S. House of Representatives
Washington, DC 20515-6050

Dear Mr. Clark:

The following errata are noted in the transcript of my deposition of July 12, 1995:

1. P. 8, line 12: strike "of" and replace with "as".

2. P. 8, line 13: insert the word "the" before "Executive Office".

3. P. 14, line 8: insert a comma between "AG" and "Deputy".

4. P. 14, line 16: begin new paragraph with "It is a place ".

5. P. 16, line 14: strike "around" and replace with "involving".

6. P. 16, line 15: strike the words "Or which".

7. P. 17, line 9: strike the word "officers" and replace with "offices".

8. P. 20, line 7: insert a comma after "particular time".

9. P. 20, line 12: strike the question mark after "both".

10. P. 20, line 12: Insert an "I" after "EO" and before "R", so that it reads "EOIR".

11. P. 23, line 21: insert a period after "that" and capitalize "but".

12. P. 23, line 21: insert the word "it" after "office".

13. P. 25, lines 1 and 2: strike the phrase "for about a decade" from line 2 and insert it in line 1 after "West Virginia" and before "and".

14. P. 25, line 15: insert a space and capitalize the "a" so that the name reads "Jo Ann".

15. P. 27, line 18: insert a comma between "deputy" and "asssociate".

16. P. 37, line 7: insert "we" after "but" and before "did".

17. P. 39, line 22: strike "each" and replace it with "AG" and insert a comma after "Deputy".

18. P. 39, line 23: change the comma after "Affairs" to a semi-colon.

19. P. 42, line 17: strike "to" and replace it with the word "from".

20. P. 42, line 18: strike "with" after "office," and before "our".

21. P. 43, line 24: delete space in "a head" so that it reads "ahead".

22. P. 45, line 20: insert "y" after "ever" so that the word reads "every".

23. P. 46, line 22: insert the word "are" before "known" and after "concerns".

24. P. 50, line 14: strike the word "in" and replace with "or".

25. P. 55, line 1: strike "Joan" and replace it with "Jo Ann".

26. P. 56, line 1: strike "Joan" and replace it with "Jo Ann".

27. P. 56, line 1: strike "AJ" and replace it with "AG".

28. P. 58, line 19: insert a comma after "line" and before "book".

29. P. 60, line 12: strike "Joan" and replace it with "Jo Ann".

30. P. 61, line 21: strike the word "Attorney" and replace it with the word "tone".

31. P. 62, line 20: strike "19" so that it reads "93 U.S. Attorneys are mine".

32. P. 62, line 25: strike "Bergenson" and replace it with "Urgenson".

33. P. 65, line 20: strike "57" before "appointment".

34. P. 74, line 10: strike the word "and" and replace it with

"in".

35. P. 83, line 10: strike the words "as I say" and add "SA" so that the acronym reads "EOUSA".

36. P. 94, line 1: strike the word "access" and replace it with "axis".

37. P. 95, line 22: strike the first "that".

38. P. 96, line 6: strike the word "constitutionally" and replace it with "institutionally".

39. P. 97, line 12: insert "lot" in between "a" and "longer".

40. P. 112, line 7: insert "and" between "counsel" and "guidance".

41. P. 115, line 4: insert "of" after "sort" and delete "the"; add "the" between "make" and "decisions".

42. P. 116, line 12: insert the word "for" between "waiting" and "a new".

43. P. 125, line 21: strike "in" and replace it with "a".

44. P. 132, line 10: strike the word "and".

45. P. 133, line 6: strike the word "be" and replace it with "are".

46. P. 138, line 20: strike "Generally" and replace it with "January".

47. P. 142, line 4: strike "McDougal" and replace it with "MacDougal".

Sincerely,

Anthony Moscato
Director, Executive Office for
Immigration Review

cc: Honorable Joe Reilly
Paul Fishman
Bob Brink

RPTS WHALEN

DCMN PARKER

COMMITTEE ON BANKING AND FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

In the matter of:	
MADISON GUARANTY SAVINGS & LOAN	DEPOSITION OF ANTHONY MOSCATO

Wednesday, July 12, 1995

Washington, D.C.

The deposition in the above matter was held in Room 714, O'Neill House Office Building, commencing at 10:00 a.m..

Appearances:

Staff Present for the Banking and Financial Services Committee: Jackson R. Sharman, III, Esq., Special Counsel; Tom Clark, Esq., Senior Counsel; and Angela Garcia, Minority Staff.

For DEPARTMENT OF JUSTICE:

CHARLES J. SGRO, ESQ.
PAUL FISHMAN, ESQ.
U.S. DEPARTMENT OF JUSTICE
10TH AND CONSTITUTION AVE. N.W.
WASHINGTON, D.C. 20530

WHEREUPON,

ANTHONY MOSCATO,

a witness in the above-entitled matter, was called as a witness, and having been first duly sworn or affirmed to tell the truth, the whole truth, and nothing but the truth, was examined and did testify as follows:

Mr. Sharman. Good morning, sir.

The Witness. Good morning.

Mr. Sharman. My name is Jack Sharman. I am Special Counsel to the Committee on Banking and Financial Services and I very much appreciate you being here today.

Also with me to my furthest left is Tom Clark, Senior Counsel to the committee. To my immediate left is Angie Garcia, Minority professional staff member.

As you know, the committee is conducting an investigation into the failure and resolution of Madison Guaranty Savings and Loan Association and related matters, including the executive branch's handling of the Madison Guaranty issue generally.

Most of the questions that will be posed to you today will go to that general area.

Mr. Clark will ask you a series of questions and probably show you some documents. Ms. Garcia may have some questions to ask and some documents to show after Mr. Clark is finished. And after that point, if they wish, the

representatives of the Department of Justice may also pose questions or show you documents.

Just for the record, in discovery in this matter, to this point we have not offered to agency counsel the opportunity in these depositions to pose questions of agency employees, but given the position of the Department of Justice and particularly sensitivities that may be involved, we are happy to extend that courtesy to the Department.

This is not an endurance contest, Mr. Moscato. At any time you want to take a break, stretch your legs, get a drink of water, just let us know.

The Witness. I appreciate that.

Mr. Sharman. We can do that. These proceedings are not governed by the Federal Rules of Civil Procedure or analogous bodies of rules, but objections may be posed to questions for the record. If there is an objection, the objection will be noted and the question will either be withdrawn or recast or allowed to stand in the questioner's discretion.

If there is an instruction not to answer, examining staff, in consultation with each other, will make a decision as to whether to proceed with the deposition or recess to obtain the Chairman's instructions on that point, if any. I hope we won't come to that point today.

I should also do the appearances for the counsel for the Department.

Mr. Fishman. Paul Fishman, counsel to the Deputy Attorney General with Charles Sgro, Special Assistant to the Deputy Attorney General.

As we discussed with Mr. Sharman, we do not represent Mr. Moscato in his individual capacity. We represent him in his official capacity from the Department of Justice and we appreciate the committee's willingness to allow us to ask follow-up questions to the extent that we believe it necessary or appropriate to make sure that the record is clarified or that any answers that are given are placed in the appropriate context.

Needless to say, we will endeavor not to take too much time to the extent possible. And as I stated to Mr. Sharman earlier off the record, in response to your letter of July 9th, laying out what you expect the procedures of the depositions to be, you will be receiving responsive correspondence from the Department hopefully by this afternoon giving our understanding of those procedures, but given the conversations and the amicable way in which they have proceeded until this point, I don't anticipate that there will be any problems today.

If there are, obviously we will try to discuss them and resolve them here off the record, if necessary, and to the extent we feel the need to consult with Mr. Moscato in order to see if we can avoid such an incident, we will obviously try

to take advantage of that opportunity as well.

I don't believe I have anything further at this point. And note, of course, for the record that Mr. Moscato has not been subpoenaed and is appearing pursuant to our discussions voluntarily because the Department, of course, is willing to cooperate with the committee's investigation to the extent that we are able to do so consistent with our law enforcement responsibilities.

Mr. Sharman. With that, I will ask Mr. Clark to proceed.

Mr. Clark. Thank you.

EXAMINATION BY MR. CLARK:

Q Mr. Moscato, if you don't understand any question I pose to you, just say so and I will try to make it understandable.

What is your current job title?

A Current job title is Director, Executive Office for Immigration Review.

Q And, well, let me back up just a little bit. Off the record you stated that you had no opposition to giving your home address?

A No.

Q Can you state that for the record?

A Yes. 4907 Briar, B-R-I-A-R Street, Fairfax, Virginia, 22032.

Q Do you have any current intention to move from that address in the next six months?

A No, none.

Q That brings up a point, just please wait until I finish my whole question, okay?

A I will.

Q Now, you said that your current position is Director of --

A Executive Office for Immigration Review.

Q Okay. And approximately how long have you been in that office?

A One year.

Q And do you recall the month when you started?

A I recall the day. July 5th, 1994.

Q Prior to July 5, 1994, what was your job?

A Director, Executive Office for United States Attorneys.

Q And that's with the Department of Justice, correct?

A Yes, it is.

Q And approximately how long were you director of that office?

A From the fall of 1992, October of 1992 to July 5, 1994.

Q Okay. You are familiar with a man named Lawrence McWhorter?

A Yes.

Q How are you familiar with Mr. McWhorter?

A Both of us are long-time employees of the Department of Justice.

Q Was he your predecessor?

A Yes, he was in that position.

Q Meaning the Executive Office?

A Yes.

Mr. Fishman. For U.S. Attorneys, since he is now the Executive Office of Immigration Review.

Mr. Clark. Yes.

The Witness. To clarify, he was my predecessor of Director of Executive Office for United States Attorneys.

BY MR. CLARK:

Q And prior to being the ~~Director of EOUSA~~, what was your job?

A I have been employed at the Department of Justice for approximately -- well, 21 years and there are a series of jobs that go back. I can do this in whatever way makes sense to you.

Immediately prior to that job, I was Senior Deputy -- Principle Deputy Assistant Attorney General for Administration, Justice Management Division, United States Department of Justice.

Q Okay. And approximately how long were you in that

position?

A I held it in two pieces interrupted by a 14-month tour as the Department's first Inspector General, Acting, so I know this is a little tough, but essentially from October of 19 -- October, November of 1987 to October of 1992, that five-year period, I was the Senior Deputy Assistant Attorney General, JMD from -- in that period, from April of 1989 to June of 1990, I was the Department's Acting Inspector General.

Q Okay. Now, --

A And I was on detail from the position of Deputy Assistant Attorney General into the Acting Inspector General position.

Q Okay. How did it come about that you moved into the Executive Office for U.S. Attorneys?

A The Attorney General asked me, my recollection is on a Friday afternoon, if I could take over the job starting the following Monday morning and I agreed.

Q And would you identify the individual who was at the time?

A The Attorney General Barr, William P. Barr, I think.

Q In what fashion was this communicated to you?

A It was a personal request that he made to me. It was communicated in speech by him to me.

Q Okay. And was there anything in your background with the Department that Mr. Barr cited as a reason why he wanted you to take that position?

A In that conversation?

Q Yes?

A No.

Q And any other communication with you?

A No.

Q Is there any reason that you believe was significant in Mr. Barr's request that you move over to EOUSA.

Mr. Fishman. I'm sorry. Are you asking him to speculate?

Mr. Clark. Yes.

Mr. Fishman. Okay. I just want to be clear that you are asking him to speculate.

Mr. Clark. Yes.

Mr. Fishman. Okay.

The Witness. My assumption has been that since I have a long history in the Department as a manager for succeedingly larger elements of the Department, that since he needed someone fairly quickly with knowledge of the Department, experience in management, capacity to take over quickly, that he -- that was the basis upon which he asked me.

BY MR. CLARK:

Q Okay. Are you an attorney?

A Yes.

Q And in what jurisdictions are you licensed?

A District of Columbia.

Q And are you in good standing currently?

A Yes.

Q What year were you admitted to practice?

A We're dealing with dim and distant times. 1975, I think.

Q Can you -- withdrawn.

Now, prior to coming here today, did you engage in any sort of preparation for this morning's meeting?

A Mr. Fishman, Mr. Sgro and I had a brief conversation yesterday afternoon.

Q Okay. Have you reviewed any documents?

A No, I have not.

Q Okay. Was there ever a time when you were asked to look through any files for any documents that might be responsive to a subpoena either from the House Banking Committee --

Mr. Fishman. I don't believe there is a subpoena from the House Banking Committee.

Mr Clark. Okay. With that, I will ask another question.

BY MR. CLARK:

Q Have you ever searched any of your files for any

documents in response to any requests?

A I have not personally done so. If there has been an institutional request of the Department, then it would have come to whatever component I was in or heading at the time and we would have had an institutional search of whatever records. I just -- but I have not sat down personally to look through my files for Whitewater documents.

Q When you transferred out of the EOUSA, did you take any files with you?

A No, sir. I mean, I'm sorry. Let me, if I might amend that, I took my personal travel records and anything specific to me, but that was it.

Q And to your knowledge, none of those documents would be related in any way to Madison Guaranty or the review --

A No.

Q -- of the recusals of USA Banks, Charles Banks?

A No.

Q No. Or of Paula Casey?

A No.

Q Have you spoken with any person other than Mr. Fishman or Mr. Sgro about the fact that you were appearing here this morning?

A I have told a couple of people that I was going to give a deposition, yes.

Q Other than your immediate family members, who have

you told?

A A couple of people in my office at the Executive Office for Immigration Review.

Q Any of your former colleagues at the Executive Office for U.S. Attorneys, have you spoken to them?

A The only person I have spoken to was Deborah Westbrook with whom I had lunch a couple of weeks ago.

Q Did you discuss with Ms. Westbrook the fact that you were appearing or had been asked to appear?

A Yes, I told her that. And we did not discuss it any further.

Q Did she tell you that she had been asked to appear?

A She told me that she had not then been asked to appear.

Q And you did not discuss the substance --

A No, we did not. And the context was a lunch with other people. It was not just the two of us.

Q Can you explain your understanding of the function of the Executive Office for U.S. Attorneys?

A Yeah. It performs a number of functions. It is the administrative management support element for 93 United States Attorneys Offices in that it provides budget, finance, procurement, property management, security services.

It is also in some management terms an oversight body in that the director and the staff are required to monitor fund

expenditures and to ensure that the appropriation is not taken into an anti-deficiency status; that is, it is required to review personnel and supervisory changes, things of that sort.

It also functions, if you will, as a home base for United States Attorneys when they come to Washington. It is the place they come to if they are going to meetings at the Department with the AG Deputy, anyone else. They will come to our offices, drop their stuff, settle in, if they need office phones, that kind of support.

We also maintain and operate the Attorney General's Advisory Committee, which is really substantively a group of United States Attorneys working together, but we house the staff and we provide the support and we make the travel arrangements. We set their agenda or work with them to set their agenda. It is a place through which requests for recusals come. It is a place through which urgent and sensitive memoranda come. Many -- many direct communications to the Department go through us. Others go directly from the individual U.S. Attorney's Office to the Assistant Attorney General's Legal Division or Department.

We focus as a point of contact for the Department as well to come and find United States Attorneys, to solicit their -- as a focus point for the gathering of U.S. Attorney opinion on a particular issue and we will often do that and put together

a memo for the Department in response to everything from legislation to proposals about how to proceed.

We run the United States Attorneys Manual, which is the sort of policy guidance, if you will, in a whole variety of areas and we manage that and keep up the changes and make sure that it is up to date.

We are the support arm, as I said, and in some cases a control point, but primarily the support arm in management and administrative areas for the U.S. Attorneys. Recognizing there are also, clearly 93 Presidentially appointed United States Attorneys, statutorily they are the lead law enforcement people in their districts and they make their prosecutorial, litigative decisions themselves.

Q And can you approximate the number of employees who were in the office when you joined the time as Director?

A I would say 210, 215, something like that.

Q Was the office broken up into any subdivisions or units?

A Yes.

Q Can you identify them?

A Sure. How do I start? Work my way through this. A fairly large personnel staff. I will try to guess at numbers if you want them attached to these, but --

Q Personnel, that's not necessary.

A Personnel function which handle the, in concert with

the field offices, hiring of support staff, clerical staff, secretaries, paralegals, financial clerks, a whole variety of folks. Another piece of that function was to support the Deputy's office in the hiring of lawyers.

In the final analysis, every lawyer in the Department of Justice is hired under the Deputy Attorney General's aegis and authority so that while individual U.S. Attorneys may make decisions about who they want to hire, that comes back through the Department for final review and approval. So we work in that area.

We had counsel's office which provided advice to the field, which provided advice on ethics, which provides a pretty good-sized and growing discipline, misconduct sort of process where we deal with allegations around misconduct on the part of attorneys and nonattorneys, both. Or which we support the director and the deputy if we decided the decision is made to move to some form of adverse office.

There is the Office of Legal Education which is -- which has two pieces. It has the -- I'm sorry. Let me step back and make that broader. We have a -- I'm getting them reversed. Office of Legal Education is the umbrella for the Attorney General's Advocacy Institute whose principal role is to train Assistant United States Attorneys and the Legal Education Institute, whose principal role is to train other departmental attorneys and other governmental attorneys.

There is some movement back and forth between those two, but those are the general roles. It is a very active, very busy place.

There is, you know, a whole range of the kinds of staffs you would expect in any administrative support operation, a budget staff, a procurement. For us, a property management staff, facility staff, which is a very big one because we have got 93 offices and 168 locations around the country. At any given time anywhere from 8 to 25 of those officers are being forced out of space, need to go into space, need to get bigger, smaller, whatever. It is constant movement through there.

Security function. I may be missing a couple, but I think I've given you a flavor for the range of the kinds of things that go on.

Q That's good enough. Now I just want --

A I'm sorry. If you get more detail then you need, stop me.

Q The Legal Counsel Office within the Executive Office for U.S. Attorneys?

A Right.

Q Now that's separate and distinct from the Office of Legal Counsel within the Department; is that correct?

A Absolutely.

Q Okay. Are you familiar with Deborah -- well, you

said you know Deborah Westbrook?

A Yes, and I should be clear how I do. As the Inspector General, I hired Deborah Westbrook as counsel to the Inspector General in 1989 or '90, during that year. I left to go back to the Justice Management Division. Larry McWhorter hired Deborah subsequently as his counsel and when I went she was there.

Q Okay. Do you know why Mr. McWhorter left the Executive Office for U.S. Attorneys?

Mr. Fishman. You can answer that yes or no.

The Witness. Yes.

Mr. Fishman. It is not -- can we go off the record a second, please?

[Discussion off the record.]

BY MR. CLARK:

Q Mr. Moscato, are you aware whether Mr. McWhorter's leaving the Executive Office for U.S. Attorneys had any relation to Madison Guaranty Savings and Loan?

A I am not absolutely certain about what Mr. McWhorter was involved in. I can tell you what I believe the basis of his departure to have been and I believe it not to have been in any way related.

Q I'm going to ask negatives, then, so I don't necessarily want to inquire into the actual reason.

Mr. Fishman. That's fine.

BY MR. CLARK:

Q To your knowledge, did his departure have anything to do with any issue concerning the United States Attorney's Office for the Eastern District of Arkansas?

A No.

Q Are you familiar with an individual named Donna Henneman?

A Yes.

Q How are you familiar with Ms. Henneman?

A She's a member of the staff of Office of Legal Counsel and the Executive Office for United States Attorneys, at least while I was there.

Q And during the time that you were there, what was her job title or titles?

A She moved from the position of a secretary basically helping in the Ethics Program up to a full-time person working in the Ethics Program. I can't give you a title, but it was a move from secretarial to sort of the first rung up the professional sequence of working.

Q Was she an attorney?

A No.

Q Okay. But Ms. Westbrook was?

A Yes.

Q Can you give us briefly an idea of the relationship between the Executive Office for U.S. Attorneys and the Office

of the Attorney General if there was any?

A That's a very broad question. It's hard without a context. The Department of Justice has 32 component agencies. All of those in most organizational structures at most times report directly to the Deputy Attorney General or in some cases, given the construct of the Department at a particular time to an Associate Attorney General if we have one and he or she is functional.

Q Okay. Ordinarily, then, the path of communication was through the Office of the Deputy Attorney General?

A Yes. My -- as a component head in the Department of Justice, in both? EOUSA and EOR, my first direct supervisory relationship is with the Deputy's office.

Q Okay. Focusing on issues of recusals and ethics matters, which office within the Department would your office report to?

A Deputy Attorney General.

Q And while you were in Executive Office, USA, did Deborah Westbrook report directly to you?

A Uh-huh.

Mr. Fishman. You have to say yes or no.

The Witness. I'm sorry. Yes.

BY MR. CLARK:

Q Now, typically, with recusal matters, would they be assigned to one attorney in the Legal Counsel's office?

A I can't answer that. Deborah -- from my view, Deborah handled them. How she parceled them out beneath her, I can't tell you.

Q Can you just explain what your understanding was of the role of the Executive Office for U.S. Attorneys when a recusal issue arose?

A Yeah. A recusal issue was typically forwarded from the district or from the U.S. Attorney's Office with the U.S. Attorney writing in to say, I want to recuse because or I want to -- I personally want to recuse or I want the whole office to recuse and I want to recuse to, typically it would be my neighbor to the -- my next door neighbor U.S. Attorney, someone close by because we have this generally not real, but apparent or perceived conflict of interest. May I do that? Because the Department guidance was the U.S. Attorneys couldn't make that decision on their own. It had to come from the Deputy's office and be blessed.

That would come through us. I believe we made recommendations to the Deputy's office about what we thought about that. Whether in fact we agreed that it needed recusal and whether in fact we thought that the place for recusal was the right place.

Q In making recommendations as a general matter was it a practice to list the statement of reasons and authorities why or was it simply a recommendation, yes or no?

A I'm having a hard time remembering, to be honest with you, but I guess my reaction to that is we would have put reasons in. I mean this was not a paper exercise for the Deputy's office. We would have had to explain to them why we were making the recommendation.

Deborah may have had conversations with the Deputy's office about that before we sent the document out. She did a lot of talking to the Deputy's office on a day-to-day basis about this kind of stuff. But I'm sure the documents would have laid out the basis for the recommendation. And we tended to make recommendations saying let's take it next door or let's recuse that U.S. Attorney and let the first assistant or someone else handle it.

Q Okay. Was it your understanding that a decision could be forced upon a U.S. Attorney?

A By the Deputy Attorney General, yes. And again, "forced" is your characterization. Basically the structure recogni-es that the final deciding authority is the Deputy Attorney General on recusal.

Q Okay. So in other words, there can be situations where the U.S. Attorney would disagree with the decision?

A Sure.

Q And yet have to submit?

A Exactly.

Q During the time that you were director,

approximately how many recusal situations did you have to deal with?

A I don't know. I'm going to say in the hundreds. It may be less than, it may be more than, but it is not in the teens. It is, I'm betting over a hundred. We saw a fair number of them there. Remember 93 districts, I was there almost two years, and we went through a transition where new U.S. Attorneys were coming aboard, many out of the private sector who would, as a matter of course, would say I want to recuse out of the following things because I just came in out of a partnership and I don't want to do anything with regard to that partnership. So, again, I'm going to say hundreds because I am betting that's about right. But I don't know.

Q Okay. Can you approximate a percentage that would be granted?

A A high percentage. The U.S. Attorney and the U.S. Attorney's Office are the guys and girls, ladies and gentlemen, pardon me, who are facing the problem and I think the Department gives great weight to the recommendation of the United States Attorney and certainly if the EOUSA adds its own weight to that, but where in the Deputy's office was felt that either, no, we shouldn't recuse out, there is not enough to recuse out here, our job is to prosecute this stuff and we don't think that it ought to be recused or maybe we don't think that the recusal recommendation in terms of where it

ought to go to next is tne right one, the deputy's office would tell us, no, do it this way or bring it back to the Criminal Division or, you know.

Q Were there any written guidelines or standards for you to evaluate applications?

A I don't -- I want to say that there are. I'm not about to say that, because I can't -- I don't know.

Q Did you personally evaluate any recusal requests or did you merely accept the decisions of Deborah Westbrook and her people?

A I would from time to time. Not very often. Not very many. Deborah might bring one in if she thought there was an issue or a problem with it or if she wasn't certain what the Deputy's office was going to think. She would want me to know what was out there and to make sure that I either agreed with it or told her maybe to do it differently and that did not happen very often. I'm trying -- you know, I gave you a general answer. Now I'm trying to think of an example and I can't. I know there were a couple of them.

Q Do you recall seeing any requests for recusal based on the fact that the than United States Attorney's Office had previously prosecuted the target of an investigation?

A No, I don't. That does not mean there weren't. And I should also note my deputy director during that period of time was a gentleman named Wayne Rich. Wayne had been both a

long-time first assistant in West Virginia and the acting United States Attorney in West Virginia for about a decade. He'd been acting for a year. He had been a long-time assistant for about a decade. Deborah would frequently talk to Wayne about these kinds of issues because he had a lot of expertise with them as well. So there's another player here.

Q Were there any changes instituted to the Executive Office for U.S. Attorneys after President Clinton entered office?

A Help me a little bit.

Q Any changes in policy?

A On -- with regard to recusals or?

Q Yes.

A With regard to recusals, at a certain point Assistant Attorney General Joanne Harris, head of the Criminal Division, acted as Deputy Attorney General for a period of time. I'm going to say that was with with Deputy Attorney General Heymann's departure. I think it was that period of time and she, as a result, I think, of the experience there of looking at recusals, I think, took a more active interest in reviewing recusals after that.

Q Ms. Harris did?

A Yes. And as the head of Criminal Division, that's, you know, what they have to reason with.

Q For what period of time approximately was Ms. Harris

involved?

A I don't have a period of time. Understand the Deputy's office often sought the advice of the Criminal Division on recusal issues and historically I think always has, so it's not unusual or atypical. All I'm saying is when Ms. Harris spent a little time as the Acting Deputy, I think she saw more of them than she had heretofore and I think was interested in them. But, you know, you asked about a policy change. I don't know that that is a policy change per se.

Q When did you first become aware that there was an issue of Mr. and Mrs. Clinton being potential witnesses in a criminal matter?

A I have no idea when I first became aware of that. Was it not raised during the campaign? I'm not -- I'm serious. If it was raised during the campaign, I believe it was then that would have been my first awareness of it.

Q Is this something that you can recall having any discussion with Mr. McWhorter about?

A None.

Q Did you have any conversation with him before you assumed the position of director?

A No. The circumstances of his departure were that he left fairly abruptly and I came after his departure.

Q Are you familiar with items called urgent reports?

A Yes.

Q Can you just explain to me the purpose of an urgent report?

A Sure. Their purpose is to -- is where a U.S. Attorney's office or a U.S. Attorney sees a situation in which the case in itself assumes a degree of seriousness quickly that warrants telling the Department's leadership or the circumstances around it. In particular, the public knowledge and awareness of it grows rather quickly so that the Attorney General or the deputy or another senior department official might be questioned about it. The purpose of those urgent and sensitive reports is to raise issues like that to the leadership level very quickly.

Q And where are they generated?

A They are generated in the first instance? The U.S. Attorney's Office. They come to the Executive Office through the counsel's office. They are sometimes, virtually always rewritten and reformatted into a particular format and then sent up to AG, deputy associate, Criminal Division, Public Affairs, I may have missed a couple. And, again, the intent is to get knowledge of these cases where there are breaking events in important cases to senior department leadership so that they can be aware of what's happening and I believe urgent and sensitive reports have been there for a long time. They certainly were in existence when I got there.

Q Okay. And are there ever instances in your

experience where the Executive Office generates these in the first place?

A If the Executive Office had generated it in the first place it would be an anomaly. We have other -- if I see an issue that needs the attention of the AG or deputy, I'm there. I can walk upstairs and knock on the door and say I need to talk to you about A or B or C or D. So we might -- we might and maybe did in a very limited set of instances take, you know -- take the discussion over the phone with an office which wanted to get something out very quickly, you know, and then put it in form and send it up. But I don't believe we generated on our own hook urgent and sensitive reports.

Q Is there any sort of follow-up to those or are they merely informational?

A Information.

Mr. Fishman. You mean follow-up from a EOUSA standpoint or follow-up in other parts in the Department.

BY MR. CLARK:

Q From EOUSA.

A Their purpose is informational. If something stuck up like a sore thumb and needed to be explained, we would go back to the district and say what does this mean. But that was generally it.

Q Are you familiar with any urgent reports that were generated concerning Madison Guaranty Savings and Loan or the

President and the First Lady's involvement with that institution or any affiliated institution or company?

A I -- it is my recollection that in a conversation with Paula Casey when she called me at home one Sunday raising a concern about inquiries that were being made about this case by a reporter and wanting to know, as a new U.S. Attorney, what to do about it, I told her to call Carl Stern through the Command Center.

Carl Stern then being the public affairs person in the Department and prepare -- and put him on notice that there was a reporter interested and seek his advice on how to handle it. And to write an urgent and sensitive report raising that issue up to the leadership. But I cannot now remember seeing that urgent and sensitive report nor its text in general.

Q Okay. Do you recall approximately when you had this conversation with Ms. Casey?

A Early in her tour, very early in her tour. My memory is she had come into the office and, I mean, still groping around for what do I do with this? In our orientation stuff, in our orientation process we cover how to handle this kind of thing so it is my belief she had not even taken her first orientation.

A, I don't know what date. And B, it would be early in her time. Whether it was before she was sworn in, she was on interim or immediately after, I can't tell.

Q Okay. Can you recall --

A And I'm sorry. I had given all new U.S. Attorneys my home phone number and said call if you think you need to. And she did. It wasn't that I had given only her my home phone number.

Q Can you recall any of the substance of your conversation with Ms. Casey?

A I think I have given you what I can recall, that she was handling this case, that there was some interest that the reporter seemed about to write about it and she wasn't sure where he was going with it and she wanted to know what to do, whether the Department had standard procedures for handling these kinds of things.

Q When you say it, is that what she said or did she specify the matter that the reporter was calling about?

A I -- she must have because I -- you know my memory was that this was about the Whitewater case or the RTC referrals, what had come to be part of the past case.

Q Do you recall the name of the reporter or the newspaper?

A New York Times. I recall the name of the newspaper, but I don't recall the name of the reporter.

Q Did you -- did you communicate with anybody the fact that Ms. Casey called you on this topic?

A I don't recall doing that. I thought my re --

response to her had been, Paula, you need to talk to Carl Stern; get him through the Command Center and we need to get a report up. The sort of stuff that we needed to do.

Mr. Clark. Off the record for a second.

[Discussion off the record.]

The Witness. May I also add a statement clarifying something?

BY MR. CLARK:

Q Certainly.

A Okay. That call I got from Ms. Casey was also not unusual. In the early days, as a transition, during a transition period as new U.S. Attorneys came in across the country, many of them called to say, what do I do with a reporter. What do I do about, you know, he or she is going to write, it doesn't seem -- I mean, can we -- how do we do it.

How do we handle it in the Department and I got, again, dozens of those. Even some -- very often since U.S. Attorneys called me at home on weekends and in the evenings, I'm sure I got some of them at home as well -- I only note that to say that to try to put that call into context, it was not the only one of its kind.

BY MR. CLARK:

Q I appreciate it and it doesn't surprise me.

A Okay.

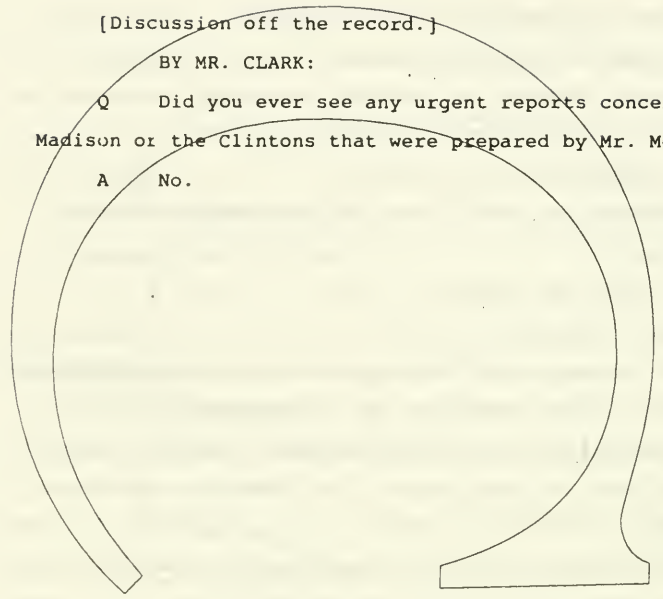
Mr. Fishman. Off the record.

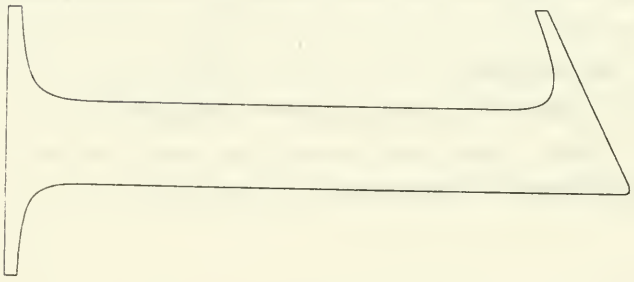
[Discussion off the record.]

BY MR. CLARK:

Q Did you ever see any urgent reports concerning Madison or the Clintons that were prepared by Mr. McWhorter?

A No.





RPTS STEIN

DCMN QUINTERO

[11:00 a.m.]

Q Did you ever discuss any urgent reports created by Mr. McWhorter with Deborah Westbrook?

A I don't think so. If I did, I have absolutely no memory of it at all.

Q Did you ever communicate with anyone on the White House staff during the time that George Bush was President concerning any urgent reports on Madison and/or the Clintons?

A No.

Q Did you ever communicate with anyone on the White House staff after President Clinton took office concerning any urgent report?

A No.

Q Do you recognize the name Mack Dodson?

A The base answer is no. It is ringing somewhere distantly and I don't know why.

Mr. Fishman. Would you read that back?

[The reporter read back as requested.]

The Witness. No, I don't.

BY MR. CLARK:

Q How about Floyd Dodson?

A No.

Q Did you ever happen to see a letter from

U.S. Attorney Charles Banks to the FBI concerning an investigation into Madison Guaranty Savings and Loan?

A I saw a letter from U.S. Attorney Charles Banks concerning that investigation. I don't remember that it was to the FBI. The letter I saw, basically the text of that letter was, I prosecuted this referral once and lost. If I prosecute it again, it is going to look political. What do you all think, or would you review this?

My sense was that was not to the FBI but to the Criminal Division or the Deputy's Office or somewhere in the Department. I just don't know who it was to. But I wouldn't have thought the FBI.

Are we talking about the same letter?

I am sorry, you are asking.

Q Speaking about this letter that you recall seeing, do you recall the circumstances under which you saw it?

A In my office, it came through.

Q And do you recall discussing it with anyone at the time that you first saw it?

A No.

Q Was -- did you have any reaction to the letter that you can recall?

A Yes. My reaction was he didn't want to go ahead with this. My reaction or reading of it was that sounded right, that it would look political and that he was looking

for advice from the Department.

Q Did you have an opinion as to whether that was a valid basis for a recusal?

A Without knowing more, it is hard to know, because the letter, in my memory, was fairly short, but it certainly seemed a valid basis to raise to the Department of Justice for concurrence. If you are a U.S. Attorney and you want guidance, help, advice, discussion, it certainly seemed perfectly reasonable to me.

Q Do you recall whether you believed that the letter contained sufficient information for you to process it?

A I don't recall whether I made a decision about that or not.

Q Do you recall any telephone conversation with U.S. Attorney Banks regarding the letter?

A Chuck and I talked a couple of times, but my memory basically is about his departure, because he was wrapping it up to get out of there. We may have talked about this, but I don't remember talking about it. I thought we processed it out. I don't think we held it.

Q Approximately how many telephone conversations do you think you had with U.S. Attorney Banks?

A A couple.

Q Can you define a couple with a number?

A No, I can't.

Q Less than five?

A I think yes, less than five.

Q You think it was around the time that U.S. Attorney Banks was departing?

A Yes, and we talked about his successor, and he gave me a recommendation for his successor.

Q Do you remember this name of that person?

A Pence, Richard Pence. I believe Mr. Pence was the Civil Chief in the office.

Q Was there a reason why he was telling you his recommendation?

A Yes. Because he knew we were going to have to select somebody on an interim basis since he was departing, and I think he believed Mr. Pence was the best person for the office. While I think he recognized that his opinion wasn't governing and that a new administration was going to make that decision, I think he wanted to get his opinion heard at least.

Q When you say we were going to make a decision, who were you speaking of?

A The Department of Justice was going to make a decision about selection of an interim U.S. Attorney. The interim appointment is 120-day appointment that belongs to the Attorney General. It is followed by a court appointment made by the court.

Q And does the Executive Office make any recommendation to the Attorney General?

A Throughout the whole transition process we made recommendations to, I think it was Nancy McFadden who handled that part of that process for the Attorney General. So I didn't make -- we didn't make recommendations personally to Ms. Reno but did make recommendations.

Q Who is -- Ms. McFadden's job title?

A I don't remember. At the time, she was working in the Associates Office with Webster Hubbell.

Q By the way, in that time period, say, January through April of '93, do you recall whether -- withdrawn.

Do you recall the President making a request that all 1993 United States Attorneys submit their resignations?

A Yes.

Q Was there any discussion in the Executive Office for U.S. Attorneys about that?

Mr. Fishman. I object to that. I don't see how that has any relevance to your inquiry whatsoever.

Mr. Clark. You are objecting on relevance grounds?

Mr. Fishman. I am objecting on relevance grounds.

If you are going to ask about a conversation in the Executive Office about the propriety of a decision made by the Attorney General of the United States unrelated to the subject matter of your inquiry, I am not sure what the basis for it

would be in this context.

Mr. Clark. I will note your objection on relevance grounds.

Are you instructing the witness not to answer?

Mr. Fishman. Before I instruct the witness not to answer, if, in fact, it is relevant, I wouldn't have to do that, so if you could explain what the relevance would be.

Mr. Banks left before Janet Reno was sworn in as Attorney General, so the decision to ask for the resignation of the United States Attorneys had no impact at all on the Eastern District of Arkansas.

Mr. Clark. Okay.

You are saying that the request that the 1993 United States Attorneys submit resignations occurred after March of 1993?

Mr. Fishman. I believe it occurred either very late March or very early April 1993. Mr. Banks left as United States Attorney for the Eastern District of Arkansas on March 1st. Mr. Pence was appointed by the Attorney General as interim United States Attorney on March 2nd, and because he was an interim U.S. Attorney who was a career assistant, his resignation was not requested.

BY MR. CLARK:

Q In your conversations with Mr. Banks concerning Mr. Pence, do you recall why, any reasons that Mr. Banks

stated why he was advocating that Mr. Pence replace him?

A To the extent that I recall, he thought that Mr. Pence had the balance and maturity to keep the office going on an interim basis.

Q Were there any particular investigations or prosecutions that you discussed with Mr. Banks?

A No.

Q Can you recall ever seeing a summary of a criminal referral concerning Madison that was submitted by the U.S. Attorney's Office for the Eastern District of Arkansas?

A I am sorry. Again, a summary of -- could you restate it?

Q Okay. In connection with a request that Mr. Banks be recused from an investigation of Madison Guaranty Savings and Loan, have you seen any summary of that investigation?

A No.

Q Going back to the urgent report for a second, is there a standardized addressee list?

A Yes, there is. It will change from time to time as people get added to it. I think we added one or two people to that list. But there is a standard, and at a minimum I think it is each Deputy Associate, Criminal Division, Public Affairs, three Senior Leaders, the Criminal Division and Public Affairs. After that I think it will depend on the substance of the matter.

For instance, if it comes up and it is civil you might drop Criminal and add Civil Division, and if it is antitrust -- you try to make it specific after you make sure you have covered leadership and Public Affairs.

Q You are familiar with Stuart Gerson?

A Yes.

Q Can you identify him, please?

A He was during the last administration, I believe for the whole of the Bush administration, Civil Division, the Assistant Attorney General in charge of the Civil Division.

Q Do you recall communicating either orally or in writing with Stuart Gerson about the letter that you referred to from Charles Banks?

A No. There would have been no reason to do it as Assistant Attorney General in charge of the Civil Division. He did at the end of the administration have a brief period when he was the Acting Attorney General, I believe after Ms. Baird's nomination. But I don't think I talked to him about -- I would have had no reason to talk to him about this even.

Q There was a period of time when he may have had responsibility for recusal matters?

A Yes, in an broad sense. He was the Acting Attorney General for a period of time. I am trying -- I don't have a specific set of dates. I want to say from the end of

Ms. Baird's nomination to the time that Ms. Reno came aboard or some period like that. By that time the Deputy's Office had pretty well moved out. I can't tell you where between the Deputy and the AG's staff recusal authority vested. But as the Acting Attorney General he would have had that responsibility in an umbrella sense.

Q Generally speaking, when memoranda were prepared from your office stating that we have received a request for a recusal and we are recommending one way or the other, they would go out under your signature, correct, while you were the Director?

A Yes, but Deborah Westbrook might have signed for me if I wasn't there, if I was on a trip, if it needed to get up quickly. So -- there would, I am sure, have all been prepared in form for me, but she might have signed as counsel for me to get something upstairs.

Q So you don't recall having any direct involvement in the actual preparation?

A No.

Q You pretty much signed in your capacity as Director other people's work?

A Sure.

Q You are familiar with a document called an Action Memorandum?

A May I ask, or let me respond this way. Different

leadership groups at different times in the Department of Justice have used different nomenclature and different forms for how they wanted memos cast. I can't say that at some point in the past I remember the usage of Action and Information Memoranda. I will tell you we don't, for instance, use that form today. So if you are asking me am I familiar in that context, there have been times when we have had things called Action Memoranda in the Department of Justice.

Q When you were working in the Executive Office for U.S. Attorneys and you had these recusal matters and memoranda, was there any follow-up by your office once the memoranda were passed on?

A Sure, because there was an office sitting out in the field waiting for an answer.

Q Can you describe for me the process?

A The memo would go up with the recusal request to the U.S. Attorney's office, our recommendation. It would go upstairs. If it came back very quickly, and many did, with an approval we would alert the field and that would be it, and they would do whatever had been agreed upon. If it got hung up upstairs for whatever reason, Ms. Westbrook's office would stay on top of it to try to move it, because what she had was a U.S. Attorney's office staying on top of her because they wanted an answer on the recusal. She would do that pretty

much by phone or in person.

Q You weren't directly involved in that sort of action?

A No. It was day-to-day, ongoing staff.

Q Do you have a recollection of transmitting U.S. Attorney Banks' recusal request up to the Acting Attorney General's Office?

A No.

Q Do you have any recollection of there being any delay in the handling of a recusal request from the Office of the U.S. Attorney for the Eastern District of Arkansas in early 1993?

A Do I have a personal recollection of delay, no. Have -- do I have a sense that there was, I guess I do, and I don't know where from. But I don't recall, you know, worrying about it was late, it needed to get done, which means nobody was driving me to go beat on a door and pull something loose.

Q In your experience, when you would receive decisions back from the Deputy's Office, would they include analysis of the merits of the investigation or prosecution?

A It depends on what went up in the request. Not often. Often the decision was you have asked to recuse; you have asked to recuse to your neighboring U.S. Attorney. Fine, go a head. Or you have asked to recuse, you have asked to recuse the neighboring U.S. Attorney.

Based on our conversations, we think it ought to go to the Criminal Division. Please move it to the Criminal Division. And that would reflect one or more phone calls that might have occurred between the U.S. Attorney, the assistant handling the matter in the field, our office and the Deputy's Office.

A lot of this stuff does not move on formal paper. A lot of it moves on telephone conversations. And then decisions and what the document -- the document will then reflect that we got the decision; let's get on with it.

Q Are you familiar with an individual named Jean Lewis?

A Only by name and public reportage.

Q Can you recall any conversations with Deborah Westbrook about a person named Jean Lewis?

A Yes. I think Deborah indicated that Ms. Lewis called from time to time to inquire as to what was happening with referrals.

Q Referrals, plural?

A That is my usage. There is no specific meaning behind it. It might have been referral, singular.

Q Did you tell Ms. Westbrook to take any actions with regard to these calls?

A No.

Q Were you interested in the fact that Ms. Westbrook

was receiving these calls?

A To the extent -- again, context, often investigative agencies -- let me step back. U.S. Attorneys' offices are the road through which the Federal Government's investigative agencies drive their investigations. FBI, DEA, Marshal Service, Customs Service, Internal Revenue Service, you go down the list of agencies with investigative authority criminally and then civilly as well. Those all move first to the Department of Justice and principally through U.S. Attorneys' offices.

There is a constant battle over resources, there is a constant battle, and obviously an agency ought not be in a U.S. Attorneys' office asking for a prosecution or a case unless they truly believe that their case merits it, warrants it and they care about it. U.S. Attorneys' offices around the country make decisions daily what they can get done, what they can't get done, what has merit, what doesn't have merit, where in the order of priority that fits.

I would venture to guess, and this is a guess, that most U.S. Attorneys will tell you they can't bring ever single thing of merit that comes into the office within that context, that the investigator was unhappy, that we had an investigator or person from RTC who was unhappy and calling to find out what was happening.

My memory is Deborah told me we were holding those calls,

and her concern, I think we had this conversation during the interim while Pence was acting. And what -- I think what Deborah told me was she was making records, holding it for the new U.S. Attorney, whoever that would be, basically saying get a new U.S. Attorney, let's go. So we were prepared to give whoever that new U.S. Attorney was this level of interest and concern.

Q Do you recall discussing with Ms. Westbrook whether Ms. Lewis should be misled in any way?

A No. I am sorry for telling -- no.

Q Do you recall any discussion with Ms. Westbrook in which one or the other of you said that Ms. Lewis should be told that matter was being held until the new U.S. Attorney was installed in the office?

A The conversations, as I have said, that I had with Ms. Westbrook was around exactly that. It was not that the matter should be held. The matter was in the office. My memory is Ms. Lewis was calling to sort of push consideration of her referral or referrals and our response was well, you know, the first response was, well, it is there and if that is not satisfactory there is a new U.S. Attorney coming in and we will make sure we make your concerns known to him or her.

Q I want to be clear here --

A I do, too, because the word "misled" is one I am not happy about.

Q I appreciate that.

At the time that you were having these conversations with Ms. Westbrook --

A Perhaps one, maybe two; not a string of conversations.

Q Do you recall whether the original request for recusal had been acted upon?

A I do not recall.

Q So then you do not recall whether it was still pending in the Department of Justice or whether the matter had been referred back to the United States Attorney's Office in the Eastern District of Arkansas?

A No, I don't.

Q Do you recall any discussion with --

A Can I again --

Q Certainly.

A But again that was an issue around the recusal of the former U.S. Attorney. The current or new or about to be new U.S. Attorney could take another bite at this apple, especially given the concern, the premise for the concern raised by the departing U.S. Attorney was politics. That situation would shift. All I am saying is new U.S. Attorneys get new bites at existing issues.

Q Is this something that you recall specifically discussing with Ms. Westbrook?

A No. Again, I have told you what we discussed, which was that Ms. Lewis was calling and that we had made a commitment to alert the incoming attorney about her concerns.

Q Do you recall whether the recusal issue actually was sent to Richard Pence while he was Acting United States Attorney?

A I don't recall.

Q In any conversations with Ms. Westbrook about Jean Lewis, the one or two, did Ms. Westbrook characterize Ms. Lewis in any way?

A Insistent is about the only characterization I recall.

Q Do you have an opinion as to whether Ms. Westbrook was upset about these calls?

A No, I don't. I don't recall her being upset about them.

Q Do you have any recollection of learning that Paula Casey declined to prosecute a criminal referral that Jean Lewis had sent to the United States Attorney's Office for the Eastern District of Arkansas?

Can you just state it, please?

You are nodding your head.

A The question was, do I have a recollection of becoming aware that Paula Jean Casey had declined to prosecute a referral?

Q Yes.

A That is a hard question to answer. Did I have a specific conversation with Ms. Casey about a declination of a referral; no. Did I at some point become aware that she had declined to prosecute one; not in specific. I will leave that answer there.

Q Did you ever have a conversation with Ms. Westbrook in which she said that the matter that Jean Lewis had been calling her about remained unresolved?

A Remained unresolved in what way?

Q In that Jean Lewis had not gotten an answer on the status of the criminal referral.

A Again, I would characterize it as had not been satisfied with our response that we would give it to the incoming U.S. Attorney. But further than that, I don't recall having a conversation -- this would have been after Paula Jean Casey got here?

Q Yes.

A Okay. It is possible. I don't recall.

Q Did Deborah Westbrook ever show you a letter from Paula Casey to Jean Lewis stating that the U.S. Attorney's Office for the Eastern District of Arkansas would decline to prosecute a referral?

A If Deborah tells me that she showed me, that I am going to assume she did. I don't recall seeing it.

Q I prefer you recollect --

A No. Again, within context, this was not very high on the screen.

Q I can appreciate that, but my question is plainer than that.

A All right.

Q Can you recall discussing the issue of Ms. Casey's declining a referral with Ms. Westbrook?

A No. The Director of the Executive Office for U.S. Attorneys is not involved in decisions around making prosecutions, bringing prosecutions or declining. That is a U.S. Attorney role. And the U.S. Attorney is far more likely to have those kinds of discussions, if they have them at all, with the Deputy in the Criminal Division.

Q Are you aware of any reason why Deborah Westbrook would be copied on a letter from Paula Casey to Jean Lewis declining prosecution?

A No.

Mr. Fishman. With all due respect, there is no --

Mr. Clark. Hold it.

Mr. Fishman. There is an assumption in your question that is incorrect and it does not fairly characterize the documents. I am not taking issue with your ability to ask the question, but there is no letter declining prosecution.

Mr. Clark. I appreciate counsel's statement. I will

leave the question the way it is posed.

BY MR. CLARK:

Q Can you verbalize that, please?

A He wants to make sure -- the question was --

Mr. Clark. Rather than you characterizing it, I will ask the reporter to reread the question.

[The reporter read back as requested.]

Mr. Fishman. Objection to the form of the question. I am not instructing you not to answer.

The Witness. I understand. I am just trying to come up with a reasonable answer that going to get us someplace.

It is possible that Ms. Casey having gotten material from Ms. Westbrook as she came in with regard to these, notified her going back. It is possible -- this declination would have been before recusal. That is my only guess, and it is a guess.

BY MR. CLARK:

Q Okay. Do you recall having any discussion with Paula Casey before she came to Washington in November of 1993?

A Other than a telephone conversation?

Q Other than -- what telephone conversation are you referring to?

A The one I referred to.

Q With the reporter?

A Yes.

Q Other than that, do you recall any conversation with her?

A If there was any discussion at all, and I talked to a lot of the United States Attorneys all the time, it would have been, how is the case going, in passing as I was talking to her about other things. We had no conversations specific to that case.

Q Did you ever see copies of a group of criminal referrals from Jean Lewis that were copied to Donna Henneman.

A No. If they --

Q You don't recall seeing them?

A No, I don't.

Q Do you recall any discussion concerning whether the Executive Office for U.S. Attorneys should get copies of criminal referrals concerning Madison Guaranty Savings and Loan direct from the Resolution Trust Corporation?

A I can't imagine why the Executive Office for United States Attorneys would get referrals. I don't recall having a discussion about that. If there was some specific set of circumstances that you can allude to maybe, but --

Q Did you ever have any conversation with John Keeney concerning a group of referrals from Jean Lewis or the Resolution Trust Corporation that concerned Madison Guaranty Savings and Loan?

A No. I am pausing just to scour what little is left in my memory. I don't.

Q I fully appreciate it. Take as much time as you want?

Do you recall attending a meeting in Washington in the Office of Deputy Attorney General Heymann with Paula Casey?

A Yes.

Q How did it come about that you learned of the meeting?

A Ms. Casey was here in Washington at Annapolis going through her orientation. It was a process through which we took all new incoming United States Attorneys General in groups of 10 to 15. We brought them here, the earlier part of the week they spent with experienced Assistants or Acting U.S. Attorneys or people who have done the job, trying to take them through issues, this is the structure, these are the other parts of the Department, this is how you handle working with State and local law enforcement, this is your law enforcement coordinating committee. Just basic information that goes to the running of a U.S. Attorney's office. And they spent typically two to three days a week in Annapolis, and we would bring them to Washington and invite the heads of component organizations to meet with each group as they came through so that they left here with some sense of what the Department was about.

It was during one of those orientations that Ms. Casey was called and told to be at a meeting in the Deputy's Office at 2 o'clock that day with the Deputy and the Criminal Division. And when she told me that, she looked daunted, and I said would you like me to come with you? And she said yes, I would very much like you to come with me.

Q So it was Ms. Casey who invited you?

A Yes. She invited me. I offered to go and she said yes, I would like you to go.

Q Do you recall who called her to inform her of that meeting?

A No. I don't. I would guess it was the Deputy's Office, but I don't know. She did allude during that conversation to a call she had from Jack Keeney earlier in which, in her view, Jack had directed her, her word, to recuse out, and she had said no. And she assumed this coming meeting was going to be essentially on the same subject.

Q Before you went to see the Deputy Attorney General, did you and Ms. Casey meet with anyone?

A No.

Q Who do you recall attending the meeting besides yourself and Ms. Casey?

A The Deputy Attorney General was there. I think Irv Nathan was there, who was I think his principal Associate Deputy. Dave Margolis might have been there, I don't recall.

Joan Harris was there. I think Jerry McDowell from the Criminal Division was there. Whoever had taken over Public Integrity, Joel somebody, I don't remember his last name was there, and maybe a couple of other folks from the Criminal Division. The table was fairly full.

Q Mr. Heymann was there?

A Yes.

Q Ms. Harris, she at that point was the Criminal Division Chief?

A Yes.

Q Approximately how long did the meeting last?

A An hour, hour-and-a-half.

Q What can you recall being discussed?

A Basically there was some discussion of the individual referrals and that is why I paused around some of your other questions. I did hear of some of those referrals in that meeting, but it was background to the basic question of Ms. Casey's recusal, which seemed to be the centerpiece of the meeting.

Q Was there one person who did most of the speaking on behalf of the Department?

A I think the Criminal Division folks did. I am trying to remember if Jack was there, and I don't remember him being there, but he could have been.

Q Who is Jack?

A Jack Keeney. Joan Harris was Assistant AJ. If somebody took a lead, I believe it would be Ms. Harris, but others from the Criminal Division were vocal as well.

Q I will mention a couple of things and would like to know if they were discussed.

A Sure.

Q Newspaper reports?

A Specific or general?

Q Newspaper reports concerning Madison Guaranty or the Clintons involving Whitewater, Whitewater-related newspaper reports?

Mr. Fishman. I am sorry, are you asking whether a particular report was discussed or whether newspaper reports in general?

Mr. Clark. Generally.

The Witness. The fact of newspaper reporting on the case was there. Whether anybody said it specifically or not, I think it was probably referred to specifically, was again this is an apparent conflict around the recusal, and so that just added to the issue.

BY MR. CLARK:

Q Did you recall any individual or individuals?

A No.

Q Addressing that topic?

A No, I can't.

Q Do you recall any discussion of the White House?

A In what context?

Q Any context?

A I think the sense was this has to be done right. What was being argued around that table was what is the best way for us to do this -- you know, for ourselves, for God, for country, for the administration, for everybody. It was not a question of gee, the White House wants it done this way.

It was -- our job is to do this down the line, by the book; right? What is the best way in which to accomplish that given the current situation in which there are all manner of concerns around the handling of it?

Q Was there any discussion of your office?

A No.

The Executive Office?

Q Yes.

A No.

Q Was there any discussion of the appropriate recusal procedure?

A No. Not that I recall. The issue was, was Ms. Casey going to recuse, and it was clear that the Criminal Division and Ms. Harris thought she should. My sense was the Deputy, although he didn't push it, thought she should. My own sense and the reason I wanted to go with her and offered myself to go with her was that she needed a little room to get

there on her own.

Q Was there any discussion of the fact that Ms. Casey had just declined to prosecute the first referral?

Mr. Fishman. I object to the form of the question.

BY MR. CLARK:

Q Was there any discussion of a letter Ms. Casey had sent to Jean Lewis dated October 27, 1993?

A If there was it was not a critical issue in the discussion, because the discussion was as I have noted, much broader and much more general to the whole case. It was really how can we best get this done.

Q Okay. How did Ms. Casey react in this meeting, in your opinion?

A I think Ms. Casey's views were -- remembering that she was a brand new United States Attorney, were, you know, tell me what I have done wrong. Tell me that there is a reason for me to recuse out here and maybe I will do it, but I haven't done anything wrong, I haven't handled it wrong. I am handling it down the line by the book. None of you have said I haven't, so why should I recuse?

Paula said-- whether she said this to me or said this in that group -- I even think she said it in that group -- am I going to have to recuse every time somebody who is charged with a crime says the name Bill Clinton? Do I have to recuse out? I might as well turn this office over to somebody else.

I think she felt very strongly that she had just come to the office, that she was handling it properly, that she was catching a whole load of criticism, unwarranted criticism, and that now her department was saying give it up. I think what she wanted her department to say was, you are doing fine. That was the centerpiece of that context. The discussion was around two different views of what is the best way to get this thing done.

Q When the meeting concluded, did you have a private conversation with Ms. Casey?

A We drove back to Annapolis together, so yes, we talked on the way back.

Q Did you talk about what had occurred in the meeting?

A I am -- yes, but it was more just cooling out after the meeting.

Q. During the meeting itself, did anyone from the Department state any particular reason or basis why in this instance Ms. Casey should recuse herself?

A Yes, and it was very clear it was, you are the United States Attorney in Arkansas, you are open to -- you are more open than anybody else to a charge that you knew the President, that you had a personal relationship with him or with the First Lady. You are closer to the scene than we are; therefore you are just more open to criticism than the

Department in Washington is.

Q Was it merely the fact that she was the United States Attorney or were there any facts particular to Ms. Casey that were cited?

A In terms of her handling of the case?

Q Yes.

A No, not that I recall.

Q Was there mention of the fact that she worked on then Governor Clinton gubernatorial campaign?

A That goes to the question of the relationship. I recall saying there are a lot of presidential appointees in this room, and I think it was Joan Harris that said, yes, but I don't know the President personally and therefore there is a difference between me and Paula.

Q That is what I was trying to get at. I thought from your earlier answer that you were saying you are the U.S. Attorney from the Eastern District of Arkansas, and that is reason enough. I am asking were there any factors beyond --

A Well, again -- I am sorry, I feel as though we are both saying the same thing in a slightly different context. Maybe not, but let me try it this way. The concern was raised not, that I recall, about Paula's having done anything wrong or about her judgment or about anything in terms of handling case. It was that given the fact that she came from Arkansas,

given the fact that she had -- whatever the nature of her relationship with the President, it was closer than that of the folks in Washington, that anything she did was going to be inherently suspect and more open to the perception of conflict than if it was done by the Criminal Division or the Department here in Washington, and that that was the undergirding of the argument advanced for the recusal.

Q Did anyone from the Department try to analogize Ms. Casey's recusal situation to any other recusal situation?

A If they did, I just don't remember. I have given you what I thought -- whatever the form of the argument, in essence, the core was essentially, Ms. Casey, you can't win here. You are going to get beaten severely just because of who you are, where you are, and it would be better for you and the Department if you recused out and it came to Washington.

Q In this meeting was there discussion by anyone of this prior conversation with Keeney in which Casey claimed he had told her that she should recuse herself?

A She may have raised it. I don't remember. She may have said something about it. And Paula's reaction to that conversation was that she didn't like the Attorney. It wasn't that she didn't understand that the recusal was being requested or desired; it was, in her terms, the peremptory tone of it.

Q Were you asked during the large meeting for an

opinion whether these circumstances warranted Ms. Casey's recusal.

A By whom?

Q By any participants.

A No. I wasn't asked for an opinion. I felt my role there was to help support her in terms of having the opportunity to come to this decision on her own rather than having it directed.

Q If you weren't asked, did you volunteer?

A No.

Q Do you recall speaking at the meeting?

A Oh, yes, quite a lot. But it was around the issue of what is the basis for this recusal; why are we going to force a brand-new sitting United States Attorney to recuse herself? And there was a lot of discussion around is that.

Q Would you say that in your discussion you generally sided with Ms. Casey?

A I did. I had gone with her because she is looking at the Department of Justice in full panoply and she just got here. 1993 U.S. Attorneys are mine, if you will, to help and support institutionally. That is why I went along, to try to buy her a little support. In the end I thought she was going to have to recuse, but I wanted her to get there on her own, and she did.

Q Do you recall Larry Bergenson?

A Yes. He was somebody in the Criminal Division who was there.

Q Do you recall his job title?

A No.

Wasn't he leaving at about that time?

Q Well, I --

A I think that is right, but I don't recall his job title.

Q How about Joe Gangloff?

A Gangloff was the gentleman I referred to earlier who I believe had taken over Public Integrity when Mike Shepherd left.

Mr. Fishman. He said Joel earlier. His name is Joe Gangloff.

BY MR. CLARK:

Q Do you recall -- would you care to take a brief break? It is up to you. I have got probably another good 45 minutes.

A If I could have a glass of water --

Q No problem.

[Recess.]

RPTS WHALEN

DCMN KRISTOFFERSEN

[12:00 Noon]

BY MR. CLARK:

Q Do you recall if Jerry McDowell was at the meeting --

A Yes, he was.

Q -- in the office of Mr. Heymann?

Do you recall any discussion between -- withdrawn.

Do you recall any discussion as to, in the event of a recusal, what would be the appropriate authority to take over?

A I don't remember specific discussion of it. There is no question in my mind that the Criminal Division would take it over, and -- wait a minute. Let me step back a second. Yeah. It was going to be somebody from the Criminal Division, whose name now escapes me, who is going to go down to Arkansas and take it over.

Q Does the name, Donald Mackay, sound familiar?

A Yes. Because I'm sorry to have jumped on the answer, but I remember the Donald. It was the Mackay part. And he was a former -- former what? Former U.S. attorney, former --

Q Now are you saying this was something that was mentioned at the meeting, or do you know this from other --

A Well, I -- I can jump on this. I think that name was mentioned at the meeting.

Q Do you recall who mentioned Mr. Mackay?

A No. I could be wrong, but I think that name was mentioned.

Q Now, was there any discussion in the meeting as to whether the Public Integrity Section of the Department of Justice would have any role in the prosecution, or investigation?

A Well, I don't -- I don't remember the specific discussion. Public Integrity was there, and this is their general area of jurisdiction, but I don't remember a specific discussion.

Q Do you recall whether Mr. Mackay was in the Public Integrity Section or another section?

A I don't. I want to say another section, but I don't know, so I won't say.

Q Do you have any sense that you were personally involved in a dispute with anyone in that meeting over control of the 57 appointment process, or was it a foregone conclusion that it would be taken within the department?

A That -- that I on behalf or he -- I'm sorry.

Q I will rephrase it.

A Please.

Q I'll rephrase it.

Do you recall stating at the meeting that the Executive Office for U.S. Attorneys in the event of recusal would appoint another U.S. attorney to take over the matter?

A I might have said that we should consider -- I mean, it's your usage that I'm going to correct, if I might. The Executive Office for U.S. Attorneys does not make this appointment, the deputy attorney general does.

I might have raised consideration, and I don't remember doing it, but I could have because it was pretty standard alternative that if we were going to recuse we might considering recusing to a neighboring U.S. attorney as opposed to bringing it back to Washington.

Q Now, do you have a specific recollection of mentioning that alternative?

A No, I don't. But since it was a very standard alternative for us to look at, it would not have been beyond the range of consideration.

Q Was there any discussion in the meeting of Webster Hubbell's recusal?

A If there was, I don't recall.

Q Do you recall being aware before you attended the meeting that Webster Hubbell had recused himself from all matters involving Madison Guaranty?

A I must have been. Webster Hubbell has never been a quarter of an inch evident in any of this, so yeah, I'm sure

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it was. Am I sure? Yeah. I don't know.

Q You don't have a specific recollection?

A No, I don't have a specific recollection, no. That's right.

Q After the meeting, do you recall preparing for anyone a memorandum to get approval for Ms. Casey's recusal?

Mr. Fishman. He personally?

BY MR. CLARK:

Q Or signing off on one?

A I didn't prepare it personally. I may have signed off on it.

Q Okay. Let me step back one step. Do you recall learning of the fact that Ms. Casey would in fact recuse herself?

A Yeah.

Q How did you learn that?

A I don't recall how I learned that.

Q Other than the trip to Annapolis after the meeting, in Mr. Heymann's conference room, do you have any other conversation with Ms. Casey about the recusal?

A If I did, I don't recall any.

Q Do you recall if, at the conclusion of the large meeting, Ms. Casey spoke to Mr. Heymann or Mr. Nathan?

A Separately and alone.

Q Yes?

A No, I don't think she did, but I --

Q Do you recall if you were a apart from her for some period of time before you traveled back to Annapolis?

A If she did, it wasn't very long, and I just don't remember that she was. I'm not saying that didn't happen, but I have no recollection at all of it.

Q Did there come a time when you learned of Representative Leach's statement on the Floor of the House of Representatives about the Whitewater matter?

A I'm sorry. I don't know the statement to which you are referring.

Q Did there come a time when you learned that Mr. Leach made public statements about Jean Lewis's communications with either Donna Henneman or Deborah Westbrook?

A The answer to that is that I must have learned about that, but I do not recall the context or situation.

Q Do you recall being --

A He made them as a public statement, though.

Q Do you recall being asked to review any documents concerning communications between Jean Lewis and Donna Henneman?

A By whom?

Q By anyone.

A No.

Mr. Fishman. Let me interpose one issue here. As you know, there is an independent counsel investigating, and all witnesses of the Department of Justice have been instructed not to discuss matters they may have discussed with the independent counsel. I don't know whether he did or not. I haven't asked him either. But I want to make sure that the question is limited to those discussions, so those discussions are not covered.

Mr. Clark. Okay.

BY MR. CLARK:

Q With that caveat, other than any communications you may have had with the Office of Independent Counsel, did anyone from the Department of Justice ask you to review any documents concerning communications between Lewis and Henneman or Westbrook?

A (Witness shook head from side to side.)

Mr. Fishman. You have to answer orally.

The Witness. No. The reason I'm pausing is, I don't recall it and I just keep going back through my memory to try to think why someone would have done that.

BY MR. CLARK:

Q Okay. You know, I understand there's some exasperation.

A No, it's not exasperation with the question, it's ~~exasperation -- well, maybe it is with the question~~. I don't

know. I do not recall undertaking such a review at anybody's request.

Q Okay.

[Discussion off the record.]

BY MR. CLARK:

Q Mr. Moscato, can you recall personally having any communications with the White House at any time after President Clinton was inaugurated on any matter concerning Madison Guaranty Savings and Loan?

A No.

Q Any conversations with Bernie Nussbaum about any --

A No.

Q Vincent Foster?

A None ever.

Q Bill Kennedy?

A None. I have never talked to him. Kennedy may have been doing vetting of U.S. attorneys very early in the process, and so I may have seen documents in that but nothing having to do with Madison Guaranty at all.

Q Okay. Just so the record is clear, would you explain very briefly what you mean by the word "vetting"?

A The White House reviews candidates for Presidential appointment as United States Attorney. I think Kennedy was involved in that early on, in the early processes. That's the only context in which I know the name. But I never spoke to

him at all on any subject, including that one or Madison.

Q Have you personally had any communications with anyone from the Resolution Trust Corporation's Washington, D.C., office concerning either Jean Lewis or anything related to the Madison Guaranty Savings and Loan?

A No.

Q How about the Resolution Trust Corporation office in Kansas City, Missouri?

A No.

Q Are you personally aware of any documents being sent from the Department of Justice to any White House office that relate to U.S. Attorney Bank's recusal?

A To the White House? No.

Q About any documents concerning Paula Casey's recusal being sent to the White House?

A No.

Q Are you aware of any requests from anyone in the White House for any information concerning U.S. Attorney Bank's recusal?

A None.

Q Paula Casey's recusal?

A None.

Q I'm going to show you a few documents, and hopefully this won't take too much longer, Mr. Moscato.

First, I'm going to show you what I will identify for the

record as a single-page document Bates stamped 007087, which appears to be a facsimile cover sheet sent from Mack Dotson to Donna Henneman, and with that I'm going to show you a document Bates stamped numbers 006642 through 6622, which appears to be a 21-page document consisting of a cover letter and an RTC criminal referral form.

Mr. Fishman. Can you give me those numbers again? I will just look at Mr. Moscato's copy.

BY MR. CLARK:

Q My question first is whether you have seen any of the documents I have placed before you prior to today.

A I do not remember ever having seen this, and I can think of no reason why I would have seen this.

Q Fair enough.

A I can't think of a reason why it went to Donna either, so.

Q I'm going to show you now a single-page document Bates stamped 006641, and my first question is whether you've seen that document prior to today.

A No.

Q Are you familiar with the form of the document?

A This is what we call an urgent sensitive.

Q If you would look at the lower left-hand side, do you see some handwriting in the left margin?

A Uh-huh.

Q I'm referring to, at the top, some numbers and then what appear to be some letters to the right side?

A Uh-huh.

Mr. Fishman. You have to answer yes or no.

The Witness. I'm sorry. Yes.

BY MR. CLARK:

Q Can you identify the handwriting?

A I can in one. I can't in the other.

Q Which one can you identify?

A The initials placed below the date 10-7-92.

Q Okay. It appears that there might be three letters underneath that?

A Uh-huh.

Q Do you know?

A Yes. Deborah C. Westbrook.

Q And you recognize her handwriting?

A Yes.

Q Do you have any personal knowledge of why she would have initialed that?

A (Witness shook head from side to side.) I'm sorry, no. It would have been prepared in her office, and what you may be looking at -- and, again, I'm speculating -- what you may be looking at is some form of sign-off or control sheet process in EOUSA that tells the director, Larry McWhorter, when he gets it that it was drafted by whoever this is and

reviewed by Deborah Westbrook on its way to Larry. And is that -- let me be clear -- is pure speculation.

Q I appreciate that. Are you familiar with Ira Raphelson?

A Yes.

Q Was Mr. Raphelson in the Department of Justice in the end of 1992?

A Yes.

Q Do you know what his job title was?

A I did once. This is not going to be accurate and fine, but it will be in broad. He was both a special assistant to the Attorney General and -- there is a formal title for this -- special counsel for financial -- is it financial fraud? Financial matters.

Q Do you know what his job duties were at that time? Or do you have an understanding?

A I don't think I have a complete and full understanding, but I think the department had a position devoted to drawing together and being able to report on behalf of, or with the Attorney General, financial matters so that we could tell the Congress of the United States how many cases were brought in the fraud area, and, you know, what recoveries, what amounts, were at issue, what investigations had been undertaken, what we were moving toward indicting, those kinds of things -- it got to be a pretty big exercise --

financial fraud in both U.S. Attorney's Offices and in the Civil Division, not to mention Criminal and the other divisions, an increasingly important matter, and this was to pull all that together and interact with Congress and other agencies. If you ask him, he might define it a little differently.

Q To your knowledge, did he have any involvement in recusal matters?

A In the deputy's office he may have, because Bill Barr was, before being the Attorney General, the deputy attorney general, and Ira -- I want to say Ira worked for him as a deputy and went with him up to the --

Q Just so that we are clear, you are saying that when Mr. Barr was deputy attorney general, Mr. Raphelson may have been in his office?

A I think that's right. I'm willing to be contradicted on it, but I think it's right. In that context, he may well have worked on recusal issues.

Q Obviously I'm not trying to pin you down on this. I just want the record to be clear because, you know, we have a lot of deputies and associates and associate deputies and deputy associates.

A Sure.

Q So that's my only purpose.

I will next show a document Bates stamped 007214 which is

a single-page document, and my first question again is whether you've ever seen that document before.

A No. Not that I recall.

Q And the contents of the document, have you had an opportunity to read it?

A Uh-huh.

Q Is this a matter that Lawrence McWhorter spoke to you about at any time?

A No.

Q Did anyone else --

A No.

Q -- speak to you about this?

A I just don't know -- I don't even know what that is.

Q Did you ever have a conversation with Deborah Westbrook about anyone sitting on a matter concerning Madison Guaranty Savings and Loan?

A I don't think -- no. I don't recall one, and it seems to me I would if we were talking about that. Sitting on? Yeah.

Q Showing you next a three-page document which consists of a single-page letter and a two-page letter, Bates stamped 000664 through 666, do you recall seeing that document in the period from October of 1992 through November of 1993?

A This is not the letter I saw. I mean I saw

something from Chuck Banks, but it was not this.

Q And you have no recollection of having seen the cover letter to Donna Henneman?

A No. Well, at least Mr. Banks made his position clear.

Q But having had an opportunity to read the two-page letter from U.S. Attorney Banks, that does not refresh your recollection that you were made aware of this situation in 1992?

A As I think I indicated earlier, I remember a letter from Chuck Banks on this subject, what I presume to be this subject, but I believe it was to the department reciting that indeed he had prosecuted this once and been unsuccessful with it and really -- I don't remember if he actually said I don't want to prosecute it again, but if he didn't, the tenor was perfectly clear that he didn't and he was looking for an opinion and guidance.

Q I appreciate that. I show you now a four-page document -- well, it he is two documents stapled together, Bates stamped 006671 through and including 006674. As I said, it is two two-page documents.

A Yes.

Q Do you recognize that document in particular? Or those two documents, or either one of them in particular?

A I think this is the one I saw.

Q All right. Can you just clarify for the record, say what you were referring to when you say you think you --

A The letter from Mr. Banks to Ms. Henneman is, I believe, the letter to which I had referred earlier in this deposition.

Q So you are referring to the letter dated January 27, 1993?

A Yes.

Mr. Fishman. And, for the record, he is looking at the documents numbered 006673 and 006674.

Mr. Clark. I appreciate that.

BY MR. CLARK:

Q The memorandum on top of that, do you have a recollection of seeing this particular two-page document 006671 and 72 at or about the date that is stamped on the first page, February 9, 1993?

A I don't have a specific recollection of it, but it looks precisely like something that would have come as a result of the letter from U.S. Attorney Banks to Ms. Henneman.

The next step was to send it, in this case, to the acting attorney general who, as we discussed earlier, was Mr. Gerson for a period of time, and through the deputy's office, and at that time it's possible that Doug Frazier was just about the only person left in the deputy's office since everybody else

would have departed.

Mr. Frazier is a career Federal prosecutor who had been on detail in the Deputy attorney General's Office at the end of the Bush administration. I recall that there was a period of time, upon the departure of the senior political folks in the Bush administration, when I believe Mr. Frazier was the sort of resident person in the deputy's office.

Q And just so that I am clear, the reason -- why is the memorandum addressed through Mr. Frazier?

A Normally, in the normal course of events, I believe this would have gone to the deputy. I believe Mr. Gerson -- had gone to the deputy and stopped. I have a memory that Mr. Gerson wanted everything to go to him.

Q Now, is it correct to say that through means Mr. Frazier should receive the document prior to Mr. Gerson?

A That would be my expectation, yes.

Q Do you have any recollection of discussing the substance of the two-page memorandum with Ms. Westbrook?

A No specific memory of it. It was -- we might have had a conversation, but it was fairly clear what Mr. Banks wanted, and I think this memo simply reflects what he said.

Q In the ordinary course, would the executive office include in a memorandum such as this a recommendation?

A Might, might not. It looks like we also attached a whole bunch of stuff, including those earlier urgents.

I thought we did often. I can't say that we did always, but I thought that we did, and I note there is not one here.

Q And do you know of any reason why there is not a recommendation on this particular one?

A I have no memory at all. If I can again speculate, I mean basically Mr. Banks was looking for advice and guidance. I would appreciate and respect any decision of the investigation. I would appreciate and expect that any decision of investigation indictment, prosecution, or declination be the responsibility of the Department of Justice. That's basically: Here, guys, tell me what you think.

Q And you don't recall, as you sit here today, whether you had a discussion as to whether the executive office for the United States Attorney should make some sort of recommendation to Mr. Gerson?

A You know, I don't recall that, and --

Q Do you have any recollection of any particular portion of U.S. Attorney Banks' letter of January 27, 1993, standing out in your mind for any reason?

A No. I remember just -- I do remember the letter, and I guess I remember -- maybe it's that sentence. I remember basically the U.S. attorney saying: Decide this.

Q Did you form any opinion as to the reason why his letter might have been phrased in the way it is?

A I think he makes it fairly clear in the letter. I mean, it's, you know: I tried this once and I lost; if I try it again, it's going to look like I'm being political; I don't want to look that way. What do you all think?

Q I may have asked this before, but, based on your experience, did you think that this was an appropriate reason?

A Absolutely, I do. A U.S. attorney who has a concern that his action, or her action, is going to be viewed as driven by politics ought to be talking to the Department of Justice.

Q I show you now a multi-page document Bates stamps 014575 through and including 580. Have you ever seen documents like this either in hard copy or on computers?

Mr. Fishman. You mean of this generic type?

Mr. Clark. Yes.

The Witness. I'm not -- I mean this looks like it's part -- it's headed "Correspondence Tracking System, Justice Department." I don't normally -- I don't know what these are.

BY MR. CLARK:

Q Okay. I would like you to turn to page 577, and on the right side underneath, the heading "Employee Name"?

A Uh-huh.

Q Do you see about the sixth entry down George Carver?

A Uh-huh.
Q Do you know that individual?
A No.
Q No?
A No.
Mr. Fishman.
Mr. Clark. Can we talk about this later?
Mr. Fishman. Can we go off the record?
Mr. Clark. Sure.
[Discussion off the record.]
BY MR. CLARK:
Q Do you know someone named Alan Carver?
A Yes.
Q Can you just identify Alan Carver for the record?
A Alan Carver worked for Jerry McDowell in the Fraud Section -- I think in the Fraud Section of the Criminal Division.
Q Okay. To your understanding, was he an attorney or a secretarial person?
A Supervisor, attorney supervisor. I would have -- if you had asked me, I would have said he was Mr. McDowell's deputy or second or third, something like that.
Q Would you turn to page 580, underneath "employee name" again, the second entry, Audrey Word. Are you familiar with Ms. Word?

A I only know one Audrey. I don't know anybody by Word. I know there was an Audrey who worked in the Executive Office of U.S. Attorneys who handled the U.S. Attorneys Bulletin. If that is not this Audrey, then I'm blank.

Q And was she a secretary?

A The one I'm talking about or this one?

Q The one that you are speaking of.

A She had started as a secretary, because I had known her earlier. She had been, I think, a secretary in one of the leadership offices. By the time I got to EOU, as I say, she was doing this, this bulletin function.

Mr. Fishman. Just by way of information, if you are seeking information as who she was, I can provide it.

Mr. Clark. At a later time.

Mr. Fishman. That's fine. I'm going to provide it now on the record here. I know who she is and I assume where she can be located.

Mr. Clark. I appreciate it.

BY MR. CLARK:

Q I'm going to show you next another multi-page document that is Bates stamped 006675 through and including 006682, and it appears to be a number of documents that have been stapled together, and I don't know by whom, and I am not making any representation but just noting as a fact that the form they are being given to you are that they are

consecutively numbered and that they are stapled together.

A Do you want me to go through all of them?

Q The very top page, 6675, is that a -- that appears to be a discrete document. Have you seen that before?

A I think I have.

Q Do you think that you saw it at about the time of its, if not preparation, the day that it is dated, June 8th of 1993?

A I don't know.

Q Do you recall speaking with Deborah Westbrook about a recusal matter having to be resubmitted to Douglas Frazier?

A I don't specifically recall that, no.

Q If you would look at the next page, the page numbering isn't the best, but it appears to be 006676, and I will describe it as a one-page memorandum with the date of March 19th, 1993, stamped upon it. It is a memo from John Keeney to Douglas Frazier. Do you recall seeing this document at or about the time that it is stamped, March 19th?

A The time I'm not sure about. I do recall seeing this document.

Q Okay. Outside of any interview with the Office of Independent Counsel, do you recall seeing it?

A Yeah.

Q Can you tell me the circumstances?

A I -- I can't, but in my mind, my memory, the Banks

memo that we were looking at earlier and this are linked; that came up, this came back; that was the question; this was the answer.

Q Is this a fairly standard document in recusal situations?

A I can't tell you. I just -- you know, a fairly standard in what -- maybe I can tell you by asking in what sense.

Q Good. Was it fairly common for the Executive Office, U.S. Attorneys -- for U.S. attorneys to receive copies of memoranda with written decisions on whether recusal was warranted?

A My sense is we just -- the most standard thing was, you know, we approve what you proposed in terms of recusal, or, in the alternative, the second most standard thing was, you know, we think you should -- we agree that there should be a recusal; we are going to recuse it to the Criminal Division as opposed to whatever you recommended. Those tended to be the two most often received responses.

Q Do you have any recollection of discussing whether this memorandum should be delivered to anyone in the U.S. Attorney's Office in the Eastern District of Arkansas?

A I have no recollection of it, but I can perfectly well believe I would have done it or talked to somebody about doing it, because that's the decision. I mean, this was what

U.S. Attorney Banks was looking for when he sent up his memo, and here you see, although this is not a final decision, you will recall earlier I said the Deputy attorney General's Office makes the decision, but it can look for advice wherever it chooses and often looks to the Criminal Division.

This appears to be the Criminal Division's response back to the Deputy attorney General's Office upon a request for advice, because it goes from Jack Keeney who is the acting head of Criminal Division to Doug Frazier who is in the deputy's office, and it basically says, you know, this is what we think of that request; we don't think there is a ground for recusal; and, further, we would not question the decision to decline.

Q I'm going to show a single-page document now.

A Are you done with that?

Q Yes. And I will identify this by, lower-right-hand corner, there appear "JJ0472." I would just ask you to read through that.

A Okay. Other than they spelled my name wrong.

Q Having had an opportunity to read that, do you recall the conversation that's referred to?

A No. I'm not suggesting there wasn't a conversation, I just don't recall it.

Q I fully appreciate that. I will show a group of documents Bates stamps 005073 through and including 005130.

Mr. Fishman. I'm sorry. Could you give me those numbers again?

Mr. Clark. 005073, through and including 005130. I'll represent that to my quick review they appear to be consecutively numbered pages and it's a large group of documents.

BY MR. CLARK:

Q Do you have any recollection of seeing those documents in the period October to November of 1993?

A I certainly never read them. If they were around the office in that, they came to Donna. I could have seen them. I don't recall.

Q Do you have any recollection of discussing the documents with anyone?

A (Witness shook head from side to side.)

Q Do you have any recollection of sending copies of the documents to anyone outside the Executive Office for U.S. Attorneys?

A I just would have no -- I can -- no, I don't, and I don't have any -- I can't come up with a reason why I would have read them.

Q That wasn't my precise question.

A I understand. I don't have a recollection of reading them or sending them to someone.

Q All right. Showing you now a document, two pages,

006767 and 006768, is which is a one-page letter and it appears to be the back of the letter, do you recall seeing this document at or about the date that appears on it, October 27, 1993?

A No.

Q Do you recall having any discussions with anyone about the substance of this letter?

A No.

Q I just wanted to go back just very quickly, Donna Henneman, ethics program manager?

A That sounds right.

Q Is that what you recall her title to be?

A I don't think I -- it was in the ethics area. Ethics program manager is perfectly well within the compass of what it might have been. I think Deborah promoted her up and gave her that title.

Q Showing you now a two-page document, 007358 and 7359, at the very beginning of the synopsis it makes reference to an urgent report dated October 28th, 1993.

A Which the Criminal Division prepared and forwarded.

Q Okay. Have you ever seen any such document?

A I have no recollection of ever having seen such a document.

Q Is this something that would have been -- well, withdrawn.

Do you recall seeing this document itself at or about November 1st, 1993?

A No.

Q Was there at that time a policy that the Executive Office for United States Attorneys would be copied on urgent reports concerning U.S. attorney offices?

A You mean by the Criminal Division?

Q Yes.

A No. I'm -- I'm not certain of this, but -- I don't recall seeing that, and unless -- unless either the Attorney General or the deputy directed it or Criminal had such a policy, I just don't know that there existed one.

Q Showing you now a single page of handwritten notes, 00490, do you recognize the document?

A No.

Q Do you recognize the handwriting?

A No.

Q You see the name Deb Smith?

A Yes.

Q Do you know any such person?

A Not offhand, no.

Q Showing you next a four-page document, Bates stamped 007380 through 7383.

A Yes, sir.

Q Did you ever see a copy of this at or about November

8, 1993?

A Not that.

Q Can you just indicate what you were pointing to for the record?

A I'm sorry. The document titled -- numbered 007380, and which appears to be a memo from Jerry McDowell, chief of the Fraud Section to Jo Ann Harris, head of the Criminal.

Q That's the only page that you were referring to?

A Yes. The remainder, the attachments look like what we call the blue sheet for implementing recusals in the U.S. Attorneys Manual.

Q Now, according to this covering memorandum, which appears to be authored from its face by Gerald McDowell?

A Uh-huh.

Q At the large meeting in ~~Mr. Heymann's office~~, you stated that the appropriate practice is to appoint another U.S. attorney in the case of recusal. Do you recall, subsequent to the large meeting in Mr. Heymann's office, being told by anybody that your statement of the appropriate practice was either wrong or not in accord with the blue sheet?

A No. And remember his -- this is Jerry's characterization of what I said, but it's close. If I did speak to it at all, I don't remember speaking to it, but I might well have because that's exactly what I believed then

and still believe now. And I think I said earlier the practice that EOUSA and the U.S. attorneys tended to prefer and tended to recommend was that the first place one looked on a recusal was to a neighboring U.S. attorney.

Q In occasions after November 3rd of 1993 -- withdrawn.

Were there recusals that occurred, that you can recall, subsequent to November 3, 1993?

A Sure.

Q Do you recall whether there was a standardized practice as to who would assume responsibility for matters where recusal occurred?

A I think if you -- you know, do I remember a specific single instance? No. I think if we were to go back and look, we would find that EOUSA frequently, ~~often, almost~~ always -- very often recommended recusal to the neighboring U.S. attorney before it recommended that the matter come back to Washington.

Q So as far as you know, you were never informed that that practice was -- should no longer be followed?

Mr. Fishman. Are you assuming that there is an assumption? Your question that I'm not sure is part --

Mr. Clark. Let me rephrase it.

BY MR. CLARK:

Q Is it your testimony, Mr. Moscato, that after

November 3, 1993, in recusal situations, your office followed the same practice, generally speaking, as it had prior to November 3, 1993?

A Yes.

Mr. Fishman. Of recommending?

Mr. Clark. Yes. Regarding recommending.

The Witness. I mean what you've got here is a recommendation from a Criminal Division section chief that the assistant attorney general -- that the recusal to the assistant attorney general rather than neighboring U.S. attorney have become the norm. That is far from then becoming settled departmental policy.

BY MR. CLARK:

Q Did you participate in any discussions while you were director and after November 3rd as to whether that should become the norm?

A As I think I've said earlier, there was a period of time, I believe after Mr. Heymann's departure, when Ms. Harris became the acting deputy attorney general and, perhaps as a result of this set of events, I don't know, took a greater interest in recusals than had theretofore been the case, and during that period of time and subsequent, a far greater number of recusals started to go to the Criminal Division than had theretofore been the case.

I don't remember a formal change in the policy, but the

decisions started to be somewhat different in that I believe -- now I'm speculating, and let me label it as such -- Ms. Harris evidently agreed with Mr. McDowell's recommendation.

Q Can you recall ever being told that you should in your recommendations --

A No. I'm sorry.

Q -- in your recommendations include both the -- a substitute U.S. attorney's office and a department within main Justice that should be considered?

A I may have answered you too quickly. That rings a bell. There was some discussions around that. I don't know that we ever formally changed policy, but I think we did open up and start to look at alternatives, a broader range of alternatives, including the appropriate legal division, but EOUSA I think continued to prefer to see the cases remain with the U.S. attorneys.

Q Can you recall who participated in any of these discussions?

A No. And Dave Margolis was handling recusals. Folks in the Criminal Division. Mary Frances -- that may be wrong. Forget that. I can't -- I think we did end up talking about the kind of broader range that you suggest, but I want to know -- I think -- my own view that comes not out of any response to Whitewater events, I think it comes out of a

change in access of decisionmaking within the Department having to do with the relative roles of legal divisions in the United States Attorney's office.

You have been in a U.S. Attorney's Office, so you may have some degree of familiarity with the occasional pull and tug that occurs between the 93 U.S. Attorneys' Offices and the legal divisions in Washington. I think it is more reflective of that than anything else.

Q Can you -- do you have any recollection of the period of time that these discussions continued for.

Mr. Fishman. Let me -- can we go off the record a second?

[Discussion off the record.]

Mr. Clark. My previous question stands. Are you instructing the witness not to answer?

Mr. Fishman. No. First of all, I don't remember what the question is exactly, so we are going to have to read it back. Well, why don't we do that now.

(The reporter read back as requested.)

Mr. Fishman. Let me consult with the witness for a second.

[Discussion off the record.]

Mr. Fishman. Having had an opportunity to discuss this matter with the witness and believing that given what his answer will be we will not be treading too deeply into the

department policy, I will let him answer the question.

The Witness. To the extent that I recollect, it would have been during and immediately after the period of time at which Ms. Harris was the acting deputy attorney general.

BY MR. CLARK:

Q Okay. And can you give me an approximation of weeks or months?

A No, not -- I mean how long they went on.

Q Yes?

A Weeks, not months, and not constantly.

Again -- and I should -- perhaps you may be tired of hearing the words "trying to clarify," but I will. The issue here was not whether the Criminal Division would be consulted on recusals, because I think historically the Criminal Division has always been consulted on recusals. The issue was the degree to which the recusal decision would in the end result in a recusal going to the Criminal Division as opposed to a neighboring U.S. attorney office, and I think Ms. Harris felt that maybe the Criminal Division was the more -- was a more appropriate place for recusals institutionally than the neighboring U.S. Attorney's Office, and it was on that axis that that -- we talk about discussions; I may have had one or two; I'm not talking about a long string of them.

Q I fully appreciate, and, again, just to make sure that we are all clear, after this period it's your

recollection that the Executive Office for the United States Attorney adhere to its former practice, generally speaking?

A We -- it's hard to answer. We may have included an occasional broader set of recommendations in response. I just don't -- I know we thought about doing that. Whether we constitutionally did it or not I don't know. You would have to go back and look at the memos. You are holding one I've signed.

Q I'm going to show you a two-page document, 00192 and 193. My first question is whether you have seen that document before.

A No, I don't recall this document at all.

Q Thanks.

Showing you now just 000210, just that one page, which is a signed copy of the memo from you to Mr. Heymann, the date appears to be December 22nd --

A Date of the memo.

Q The date that it was signed off on, and that appears to be Mr. Margolis's signature on behalf of Mr. Heymann?

A That's right.

Q Is a three-week turnaround on a memo like this, in your experience --

A Not -- I'm sorry.

Q Is it a long period of time? Is it an appropriate period of time compared with others you have seen?

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Mr. Fishman. Can we break down the compound question?

Mr. Clark. Certainly.

BY MR. CLARK:

Q This memorandum was signed off on 21 days after it was dated. In your experience, relative to other memoranda of a similar sort that were prepared by your office, is 21 days a short period of time?

A It's -- the concern I have here is "of a similar sort." There are probably not very many such memoranda involving sentences that recite Presidential involvement. In the scheme of things, this is probably a little longer than normal, not a longer than normal, and, as I said, most of those didn't involve words like "Mr. Clinton and his wife may have some knowledge."

Q If it were a matter involving, say, a State politician, would you expect that the turnaround time would be shorter?

A Boy, that's making a really fine-graded suggestion or drawing a finely-graded inference. Any public figure is going to make the Department stop and look. There may be. Obviously the President is sui generis in the system, but you are talking about a State court judge or a State court official or a State government official. Folks are going to stop and look at that.

Q Showing you now a document Bates stamped 006595,

just one page, my question is, do you recognize that document?

A No.

Q Okay. I will just note for the record that the name Tony or what I read to be Tony has been handwritten on it?

A I agree it looks like the name Tony.

Q You don't know whether that was addressed to you?

Mr. Fishman. I'm sorry, do you have the documents to which it was attached when it was produced to the committee?

Mr. Clark. I have -- I have other documents.

Mr. Fishman. For the record, my -- our index reflects that that was item number 46 in our production and was the second page of a 76-page or a 77-page document. It was something that was produced as part of a package, and perhaps it might give him some context.

Mr. Clark. Well, I will represent for the record that documents that were put in the public record with Mr. Leach's March 24th, 1994, statement on the Floor of the House were associated with this particular piece of paper.

BY MR. CLARK:

Q Does seeing this refresh your recollection that someone gave to you documents connected with Mr. Leach's statement?

A I'm sorry, I just don't recognize it or remember it.

Mr. Fishman. I'm sorry, are you asking, were those documents only released in connection with Mr. Leach's statement or -- I'm just curious what your question means; I don't really understand it.

Mr. Clark. I'll rephrase the question.

BY MR. CLARK:

Q I will represent that, as it was produced to our committee, this single page, 006595, was accompanied by -- and I don't know if they were stapled together or merely consecutively numbered -- a substantial number of documents that were documents which were placed in the public record by Mr. Leach in connection with his March 24th, 1994, statement on the Floor of the House, and so my question is, do you have any recollection that someone -- that anyone gave you a package of documents and said would you please read through this?

A No.

Q Showing you now a two-page document, 006584 and 85, which on the top of the first page it is headed "Chronology," have you ever seen that document before?

A Yeah, I think I have.

Q Do you know in what context you saw it?

A I remember seeing it.

Q Do you know who the author of that document is?

A It would be a guess. I would -- if you want me to

answer, I would guess Deborah Westbrook.

Q What's the basis for your guess?

A The -- maybe I just ought to pull it back. I don't know.

Q Do you have a recollection of asking Ms. Westbrook to prepare a document similar to this?

A Yeah, but I'm trying to remember why and for what purpose. I do have that recollection, but whether it was simply to brief the deputy's office or for some other purpose I don't recall.

Q Do you remember anything else concerning the preparation of this document?

A For instance?

Q Well, can you recall the time at which you may have asked Ms. Westbrook to prepare such a document?

A Just from the dates, it's after November of '93, but, no, I'm sorry. I do recall it, and I do think I did ask her to prepare it, but whether it was just to bring me up to date or for another purpose, I don't know, or to --

Q And as you sit here, you can't recall at this time any reason why you would have made that request?

A Well, I can speculate on reasons. I'm just -- you know, the recusal -- I'm sorry.

Q Okay. Before you speculate, you have no firm recollection --

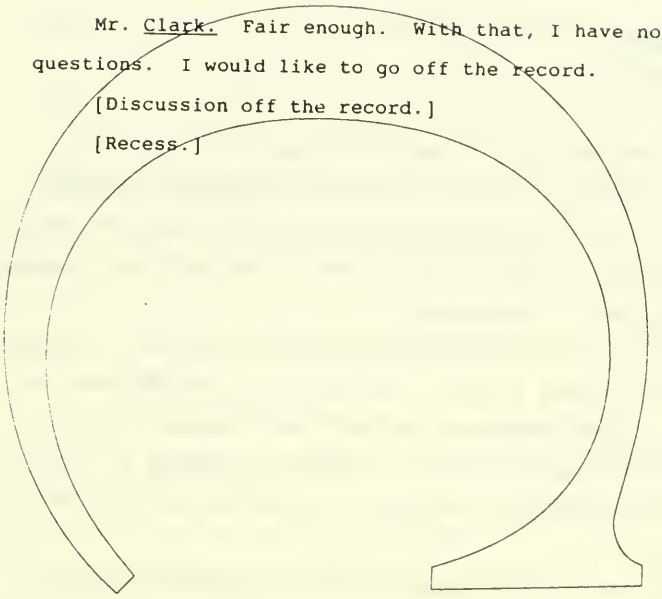
A No.
Q -- of the reason?
A No.
Q Okay. Let's leave it at that.
A Okay.
Q Finally --
Mr. Fishman. Off the record.
[Discussion off the record.]
BY MR. CLARK:
Q I'm going to show you three pages consecutively numbered 006586 through 6588, and they appear to be separate handwritten documents, and I will just ask you if you recognize any or all.
A No.
Q Do you recognize any of ~~the handwriting?~~ I know that there are a number of different handwritings.
A Yes.
Q I think you are referring to the last page, 006588?
A Right.
Q And there appear to be at least two different types of handwriting on there. Would you agree with that?
A Yes.
Q Okay. I think you were pointing to the top two entries which appear to be in a darker ink?
A That's correct.

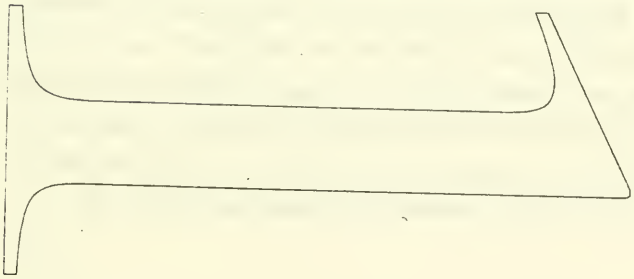
Q And the handwriting beneath it?
A That's correct.
Q And do you think you recognize that?
A Yes.
Q Whose handwriting do you think that is?
A I think that's Deborah's, Deborah Westbrook.
Q Looking at it, I understand that they are incomplete thoughts, but do you have any recollection of discussing with Deborah Westbrook any involvement of Public Integrity in Whitewater -- the Public Integrity Section in Whitewater matters?
A No. Public Integrity Section was at that meeting in the deputy's office.
Q You are referring to the November 3rd meeting?
A Is that the date, November 3rd? Yes, but other than that.
Mr. Clark. Just give me one second.
[Discussion off the record.]
BY MR. CLARK:
Q Mr. Moscato, you will have an opportunity to review the transcript and make any changes that you deem appropriate, but as you sit here now, is there anything that you can think of now that, maybe on the basis of our entire discussion, you would like to clarify or change?
A No.

Mr. Clark. Fair enough. With that, I have no further questions. I would like to go off the record.

[Discussion off the record.]

[Recess.]





RPTS WHALEN

DCMN QUINTERO

[2:17 p.m.]

Q Mr. Moscato, I just happen want to thank you on behalf of the Minority Members of the committee for coming before us today and taking time out of your schedule to answer the questions as honestly as you can on the Whitewater Madison investigation. I appreciate it.

I first have some questions that relate to the standards or the traditional process under which the Justice Department reviews criminal referrals, which is the standard document that the RTC Resolution Trust Corporation produces to the U.S. assistant -- to the U.S. Attorneys Office in their respective district.

What is -- if a criminal referral is in fact referred to the Department of Justice for prosecutorial determinations, what is the normal process, standard process under which that referral is reviewed?

A That will, as will so many of these questions, depend. A very large percentage of cases go directly to the U.S. Attorney's Office, where they are reviewed for prosecuting merit based upon the documents, the evidence, the way the agency was able to put the case together; whether the assistants and their supervisors think there is a case with merit. And if they do and they consider the case to be

important, they move forward, move to the prosecution.

Were you looking for a departmental review of cases, because in a very large percentage of cases there is none.

Q There is no standard process under which the Department adheres to reviewing information referred to it from the U.S. Attorney's Office?

A Well, again, the Department doesn't get -- let me stop.

Q Let me clarify my question?

A Okay.

Q If the U.S. Attorney refers prosecutorial information to the Department of Justice for a prosecutorial determination, is there a standard process under which the Department reviews that information?

Mr. Fishman. Can we go off the record for a second?

[Discussion off the record.]

BY MS. GARCIA:

Q On the record.

A It generally doesn't happen that way. The case is referred to the U.S. Attorney. The U.S. Attorney makes the decision as to whether to proceed or not. If he or she decides to go forward, the case proceeds.

Q Is there a certain division within the Department that reviews that information?

A As a matter of course, no.

Q Is there a certain person that you could name that would make the final determination as to whether to prosecute?

A The individual United States Attorney's office. There is no single individual in the Department who makes decisions for -- who makes prosecutorial decisions for U.S. Attorneys.

Q Is the process then that a recommendation is made by the Department of Justice to -- on whether to prosecute or to decline --

A No.

Q -- information provided to a U.S. Attorney?

A No.

Q Is there a standard length of time that the Justice Department adheres to in reviewing prosecutorial information referred to it by a U.S. Attorney's Office?

A No. Again that goes back to there is no standard process.

Q Right.

Can you describe to me or impart any knowledge to me as to how long the Department may take in reviewing prosecutorial information provided to it from a U.S. Attorney's office?

Mr. Fishman. For what purpose?

Ms. Garcia. To make a recommendation to the U.S. Attorney's Office on whether to prosecute or decline.

The Witness. Again, that doesn't happen in normal course of events.

BY MS. GARCIA:

Q I'm looking for a -- not a standard, but just a general amount of time in which the Department may take to review that type of information. Could it be reviewed within three months and sent back to the U.S. Attorney's Office? Could it take up to two years?

Mr. Fishman. I'm sorry. What type -- what type of information are you talking about?

Ms. Garcia. Let me set forth a scenario.

BY MS. GARCIA:

Q If a U.S. Attorney's office provides prosecutorial information in the form of a criminal referral to the Department of Justice to review, requesting that the Department in its review make a recommendation to the U.S. Attorney's Office as to whether to prosecute or decline that referral, what is a normal average length of time that it would take the Department to review that information and make the recommendation?

A I think that happens to the extent that it happens at all so rarely that there is no norm.

Q Could you give me a general amount of time, three months, two years? Is there a general amount of time?

A It's very hard. Because were that to happen, it

would be out of the ordinary. It would be a situation in which -- I'm trying to reach for a situation in which that would occur.

Let me hypothesize for a minute. A U.S. Attorney's office, I presume a smaller one, might decide that it had a fairly complicated fact pattern in front of it, in terms of the bringing of an environmental suit in the criminal area, and might call the Environment Division and ask for its opinion, it's notion, its guidance, that kind of thing.

The length of time that might take would depend entirely on the facts of the situation, so each of them would tend to be sui generis to the extent that it does happen and they don't happen very often, if at all. There is a lot of back and forth between legal divisions in the United States Attorneys offices, but very little, if any, on the question of whether to bring the case or not.

Q Let's stick to those few incidences in which the Department has to review a case and make the determination or the recommendation, I should say, to decline to prosecute a criminal referral.

What types of -- strike that.

Can you describe to me what information in the referral or in prosecutorial information provided to the Department from the U.S. Attorney's Office might cause a delay in the review of that information? Not so much a delay, but a

greater length of review?

A I'm grappling with these, because these just -- at least, to my knowledge, I don't have any track record to go on. Just U.S. Attorneys do not pony up, in my experience, these kinds of cases. The case we have been referring was around a recusal. It basically looked like Mr. Banks was asking for an opinion, but if you can give me a specific instance?

Q Let me refer you to a document 006674. It's page 2 of Charles Banks' letter to the FBI, I believe, Tom Pettus, and on October 16th of 1992. It was then forwarded to the Department through Donna Henneman on January 27th of 1993. Page 2 of the letter, the relevant part in quote: "I would appreciate and expect that any decision of investigation, indictment, prosecution or declination be the responsibility of the Department of Justice."

Is it often that this is -- that a U.S. Attorney leaves this Department or refers -- strike that.

Is it often the case that a U.S. Attorney refers a decision to the Department of Justice, a decision of this nature?

A Well, and -- A, no. I think. And B, I think the predicate is the sentence that leads the paragraph immediately above, because I think what Banks is really saying here is, I believe this office has a conflict of interest and that makes

it into -- I see what you are saying now. But I think this is in form a recusal memo and then basically a very broad sort of invitation to the Department to do, in essence, what it thinks is right.

I have not seen this usage in any other circumstance. Maybe that is what caught everybody's eye. I don't know. U.S. Attorneys generally happily move on their own accord and resist going back to the Department institutionally.

Q So your interpretation of Mr. Banks' letter, forwarded to the Department of Justice on the 27th of January, is that it was a request for recusal and then a later request to have the Department determine prosecutorial -- the prosecutorial merit of the '92 criminal referral generated by the RTC?

A We're trying to hang a ~~label on a document~~ here, but yeah, and I know Jack Keeney, basically his response back to the Deputy's Office answered both of those questions. Essentially said, no, I don't see your ground for recusal and, yeah, they can decline if they want to. That's within the range of alternatives. Acceptable alternatives. So it's just -- I guess if you're asking is this a standard kind of request from the U.S. Attorney, my answer, based on my almost two years there, is no, it's not. At least not the second part of it.

Q Mr. Moscato, I first have to say I apologize for --

I appreciate you bearing with me in this. My knowledge of the processes of justice are not as up to par as my colleague's, Mr. Clark. I don't have the experience that he does in this area and I appreciate you bearing with me.

I'm not trying to trap you.

Mr. Fishman. Off the record.

[Discussion off the record.]

BY MS. GARCIA:

Q Now that we have straightened out exactly what Mr. Banks' request and what the process that the Justice Department underwent as a result of his request, can you describe for me the normal length of time that the Department or the standard procedure under which the Department goes in reviewing a recusal request?

A Yes. The request comes ~~in from the U.S.~~ Attorney's Office and it generally cites a real conflict of interest or at least a publicly perceived conflict of interest, and identifies that conflict as either residing with the U.S. Attorney or with some significant portion of -- some significant individual or portion of the organization and makes a recommendation as to where the recusal should be made to. Who should, in fact, take the case if that's agreed.

That comes to us, us being, in this case, the Executive Office for United States Attorneys, which takes that, there is often discussion between the counsel's office and the

U.S. Attorney's Office about the specifics of the request, then that is taken. There is a memo placed upon it from me to the Deputy's Office saying this is the request. This is what we think, we need a decision, and that goes up to the Deputy's Office and it is decided in the Deputy's Office.

The Deputy's Office has the option as well, formally or informally, and it does I think both, to seek counsel guidance from the appropriate legal division, from anybody else, you know it considers to -- it could come back to us and sometimes talk to the district itself. Basically whoever is making that decision in the Deputy's Office is looking to whatever sources of information are available and they will render a final decision.

Q Is there a standard amount of time that that process takes?

A No. It is -- no.

Q What may increase the length of time in that process going forward?

A The degree of factual difficulty. The degree of perhaps legal difficulty in the case; perhaps the degree of uncertainty about the conflict whether it is real, whether it is perceived; how much it's perceived. We start with an underlying premise, I think, that recusal is an extraordinary act rather than an ordinary one, simply because the U.S. Attorneys are there to prosecute the cases in the

business of the United States. So they ought to do that and we should only agree to recusal in extraordinary cases where there is a real or apparent conflict, so we start with sort of a direction that says we don't want to do this but present the case and we will see. So that a disagreement about that can slow this process down, and sometimes dramatically.

There may also be a disagreement about who should take the case and whether that ought to be a division here in Washington, a neighboring U.S. Attorney, or whether you might just perhaps recuse the U.S. Attorney and let the first assistant handle it, and that has been done. So there are a number of factors. And finally in an office workload, just general workload, either in the U.S. Attorney's Office, the Executive Office or the Deputy's Office can slow it down.

Q Do you --

A We don't like that as an institution, but --

Q Do you recall when you first received Mr. Banks' request for recusal?

A I am better informed than I was earlier today. Obviously, somewhere in the February time frame, January-February time frame, but that's about it.

Q Can you describe to me what was happening in the Department, the overall reorganization of the Department at that time?

A We were in a difficult period of stasis. Ms. Baird

had been identified, nominated, had had difficulty, and I believe -- I'm not even going to say where the nomination was, because I don't remember at that time, but Mr. Gerson, who had been a holdover from the previous administration, had been made Acting Attorney General, and the period lengthened out.

It was a difficult, I think, situation for him and for the Department. We were just sort of the waiting for the shoes to drop, people to be selected, that kind of thing.

Q Would it be out of the ordinary for the Department during that type of circumstance and period to make decisions that would have direct impact possibly on the Office of the White House -- Office of the President?

A There's an interesting balance that I think every -- whether it's the Department of Justice or any institution that's in transition makes, and that is when you make serious big decisions, you tend to want to make them with first line folks there, and when you're in transition -- I don't want to call it a sort of a maintenance operation, because, frankly, the men and women who functioned as interim United States Attorneys throughout much of 1993 in most districts did a wonderful job.

They were long-term career people. They stepped up and they were great. But I think it is also human to say, well, you've got a major and critical decision, you want the presidential appointees in place, you want the real players in

place, so my sense is decisions that had to be made got made. Decisions that could be deferred, if there was some sort of pending resolution out there that wasn't forever, were held waiting. You sort the make decisions that said I can live with this for another week or two, if I have to, so we will know more where we are going to be.

And I think that's just the nature of large institutions. And I think that happened for us as well, throughout much of '93.

Q I'm asking these questions because I've noticed that Mr. Banks referred this recusal request to the Department in January-February of 1993. A decision on the reason for which he was asking a recusal, the 1992 Madison Guaranty referral generated by the RTC.

The recusal request, the referral was not dealt with until November of '93, I believe. That's a substantial gap in time, and I'm trying to understand why that gap might exist. And as far as I've learned, as much as I've learned from you in the last 20 minutes, it's because the Department was going through this transition; is that a correct characterization?

A I don't know that -- certainly that has to be part of it. Because it's not only true in the U.S. Attorneys Office, it's also true, for instance, in the Deputy's Office. In fact, Doug Frazier, I think, by February or January, is basically the only person left. The senior Presidential and

political appointees in the Bush administration have on January 20th left the government. Doug is holding the fort as a career person waiting the next group to come. We get this period where we don't have a group coming in.

In the Department of Justice, the structure at the Department is the Deputy Attorney General is the day-to-day operational manager, so all roads and all paper go to the Office of Deputy Attorney General first.

I would guess Doug had a pretty sizable stack of papers to deal with for quite a long time, so it would be there with Richard Pence operating in an environment in which he's the interim waiting a new U.S. Attorney. You know Mr. Pence is going to look at that, he knows Mr. Banks has sent up this issue for consideration by the Department, so institutionally that probably played a role.

Q There have been representations made earlier today that Mr. Pence is Acting Attorney General for the Eastern District of Arkansas.

A Acting U.S. Attorney.

Q Acting U.S. Attorney. Sat on the Madison referral between the period of May and November of '93. I'm not going to --

Mr. Fishman. Let me interrupt for a second, if I could.

There was, I believe, a memo that Mr. Clark showed Mr. Moscato from October of 1992, in which it was stated: I

believe Mr. Moscato expressed no knowledge of the contents of the E-mail that someone had been sitting on the referral in the fall of 1992 before the presidential election. That's where the "sitting on" phrase came from, I believe.

There was also -- he also testified that Mr. -- that he had discussions with Deborah Westbrook about holding the referral pending Paula Casey's arrival in the very late summer, but I think the confusion is the term "sitting on" comes from that E-mail. I could be wrong, but that's my recollection. I just want to make sure that the record is clear.

Ms. Garcia. Let me take a minute to find what I believe is that E-mail.

Mr. Fishman. Sure.

BY MS. GARCIA:

Q Mr. Moscato, let me present to you a document 006639. It's an E-mail by L. Jean Lewis, June 29, 1993, I believe. The relevant statement is: My source has advised me that the Acting U.S. Attorney, Richard Pence, has stated that he has no intention of acting on this referral, and plans to let it sit until such time as new U.S. Attorney designee Paula Casey takes office on either an interim or permanent basis.

Let me let you review that document for a moment.

A Okay.

Q While I recognize that Mr. Pence is the best person

to answer to that accusation --

Mr. Fishman. I'm sorry. I don't know whether calling it an accusation is fair to Mr. Pence.

Ms. Garcia. An accusation that he is not going to take up the referral, that he is going to sit on it. I believe that's the accusation made.

Mr. Fishman. Okay. I'm not sure it's an accusation as much as it is simply a statement of fact. He's just going to hold it. I will withdraw my objection until I hear your question.

Ms. Garcia. I don't know if I'm going to take it as a statement of fact.

Mr. Fishman. Okay.

The Witness. You're right. He's the appropriate person to talk to about that.

BY MS. GARCIA:

Q I wonder if you might be able to give me some justification as to why an Acting U.S. Attorney might sit on a referral of that nature?

A The previous presidentially appointed U.S. Attorney had tried a case on this referral on a similar one and lost the case. The previous presidentially appointed U.S. Attorney had sent it up to the Department and said: What do you think? The Department had come back and said, in June, evidently, came back and said: Well, we don't think you ought

to recuse, but we certainly think if you were to -- what's the term I'm looking for? -- if you were not to proceed, that's within the realm and the range of acceptable alternatives.

Mr. Pence is in. In the summer, he has been acting for several months. He by now -- I'm guessing, maybe in this case he has been identified or he can see some light at the end of this tunnel and may well have thought, no harm is going to come from me or to this process if I wait for Ms. Casey to finish the nomination process, come on board as the regular United States Attorney. I will present it to her and if a prosecution decision is made, it can be a prosecution decision of this new administration.

That's not an unreasonable -- I said it, so I guess I think it's reasonable, but it wouldn't surprise me if that's the kind of conclusion that Mr. Pence thought through. I would be willing to bet a number of other interim U.S. Attorneys made similar kinds of decisions about other cases.

Q I appreciate you answering that.

Earlier in our discussion you stated that a recusal may be requested either based on a direct conflict or an appearance of a conflict. Can you give me some examples of what might be an appearance of a conflict?

A Sure. We require new U.S. Attorneys who have been in law firms prior to their coming on board to divest

themselves of all financial relationship with their old firms before they come on board or in some cases even as they are coming on board. We will give them a little time to work it through.

Once they are done financially, there is no agreement to come back, there is none of that, they are separate in actual terms from that firm. However, there is a recognized perception that as a member of that firm they might make decisions within the exercise of their discretion that would favor the firm. U.S. Attorneys will often recuse out on cases involving their own firm, if not forever, at least for a period of time.

Sometimes you will also get -- I don't know how much more you want. You will also sometimes get in an age where increasingly both genders are going to law school and graduating, you will sometimes get a U.S. Attorney coming aboard with a mate in private practice. And sometimes that's criminal practice or one involving the United States Government, and again they will just recuse that as a matter of course, simply because of what would be perceived as a conflict.

Q Is a U.S. Attorney a public servant hired through the normal competitive process?

A No. The United States Attorney is a presidential appointee and subject to advise and consent of the Senate.

Q Does the fact that a U.S. Attorney is a political appointee present a potential of future appearances of conflicts due to its relationship, the Attorney General's -- U.S. Attorney's relationship to the Office of the President?

A My answer to this is colored by 21 years in the Department of Justice. I haven't made this my career choice lightly. We make a lot of effort to insulate and to work with incoming presidential appointees whether they are the Attorney General or the U.S. Attorney or the U.S. Marshal or anybody else, to make sure that we have counseled them adequately and set up the controls and the bridges and the walls that they need so that they can function in their jobs.

It is critical that the Department of Justice, the United States Department of Justice be viewed by the American people as not only effective and efficient, but impartial and fair. I think my own personal opinion is that over the last 20 years we have been extraordinarily blessed by the presidential appointees we have had of both parties because they have been men and women of probity, of talent, of competence, and of ability, and they have come and done a great job. I'm not going to tell you every single one of them was perfect in every case, but we've had a very high degree of extraordinary performance. And that last was just me.

Q Let me restate my question.

A I did think I answered it. I'm sorry.

Q I think I'm looking for a different answer.

A Okay.

Q I'm curious as whether the fact that a U.S. Attorney is a political appointee may have the potential of creating appearances of conflict for the U.S. Attorney in the -- in her or his tenure?

A I guess yes. To the extent -- you know, any political process, especially in the times in which we live is open to that kind of charge. On the other hand, my sense in the two years when I worked with the U.S. Attorneys, first, the departing Republicans and then the incoming Democrats, is that in some significant portion the presidential appointment and the advise and consent process is critical to the capacity to conduct the office because they come and become part of administration and they can wed better, I think, with the administration and with their colleagues who are leaders at the Department of Justice.

I'm not sure how I felt before I took the job; coming out of the job, I think it's an absolutely critical element. I would not change that presidential appointment for anything. I think it adds strength.

Q I'm not saying that or implying that it does or doesn't add strength to the ability for the politically appointed U.S. Attorney to conduct his or her job. I'm just curious as to whether because of the nature in which the U.S.

Attorney is appointed to his or her position may raise this potential of having some sort of conflict or appearance of conflict when considering prosecution or prior to considering it?

Mr. Fishman. I'm sorry. Are you asking if tension was there, the tension between those two things?

Ms. Garcia. I'm asking whether there is a potential for the appearance of conflict.

Mr. Fishman. That's what I'm asking. Is there a tension between that role and the job being prosecuted, that sort of thing?

Ms. Garcia. Yes.

Mr. Fishman. Okay.

The Witness. I think there is. I think there is -- I think it's also true that that potential exists almost no matter what the appointment process. If you were elected, that tension would be in existence. If you were appointed as part of the Federal Civil Service process, then those who disagree with your decisions would look to that process.

In the U.S. Attorneys, they are frontline, very public, their decisions are scrutinized and so I think there are tensions virtually in any appointment process, but yes, I think there are some tensions associated with the presidential appointment.

BY MS. GARCIA:

Q There is a potential for an appearance of conflict in pursuing certain cases or matters? I'm not saying that the tension exists with every case or that there is a high potential of having this happen, but there is a certain amount of potential that that would happen.

A If you are asking me whether the United States Attorney who happens to come from the home city of the President of the United States is subject to examination and potential criticism more than his or her '92 colleagues, yeah, I will agree with you. I think all U.S. Attorneys to some degree or other are subject to those kinds of questions when they file a case which -- when you file a major criminal case of any kind, there are going to be a group of folks who don't like that or may not like it, and if they find themselves on the other side of the political fence, you are going to be criticized, and some U.S. Attorneys have been for that. So I don't know if I'm answering your question.

Q Let me bring it to the specifics.

A Okay.

Q Do you find it so out of the ordinary or not conforming with prior departmental procedure that U.S. Attorney Paula Casey recused herself from pursuing the prosecution that directly affected the Office of the President or had the potential of having that effect?

A No.

Q Is that potential -- strike that.

Is it uncommon for that potential -- is it uncommon that a U.S. Attorney might have to recuse herself, any U.S. Attorney might have to recuse his or herself from pursuing prosecution that might directly affect the Office of the President without regard to the specific Paula Casey incident.

A No. I mean, it doesn't come up very often, but when it has, we've had special prosecutors appointed.

Q Thank you.

You discussed earlier today with my colleague a meeting that you attended with Ms. Casey at the -- let me get this correct -- Deputy Assistant Attorney General's Office?

A Deputy Attorney General.

Q Deputy Attorney General's office.

A Mr. Heymann.

Q What was the conclusion of that meeting? Was there a consensus reached between the participants?

A There was some consensus. You know we were all going in the same direction, we were all trying to do the same thing. The goal there was to do this right. There was not in complete consensus about the best manner, mode, or method to do it right, and I think to that extent, I can't say that we walked out of there all in agreement, because I think Paula still needed a little bit more time to reach her recusal

decision, and my sense was that the deputy left her to do that. It was not -- I don't recall him looking at her and saying, "Paula, you will recuse." I think he wanted her to get there herself and to reach the conclusion and be comfortable with it.

Q Am I correct then that Ms. Casey left the meeting still with the authority to determine whether to recuse herself or not?

A Yes.

Q Do you know whether anyone in the Department of Justice directed her from that point forward to recuse herself from this case?

A If somebody did, I'm not aware of it. I don't think that anybody did. She has never told me that anybody did.

Q To the best of your understanding in this case, she determined on her own to recuse herself from further investigation of Madison Guaranty?

A You know, let's be clear. Paula perfectly well understood what the Department of Justice wanted in terms of its desire as represented out of that meeting, but I believe from there on it was her call and she made that decision herself.

Q Okay. During the course of that meeting, did anyone suggest that Ms. Casey continue with the investigation of Madison and in the course of that investigation investigate

the thrift less than thoroughly?

A No.

Q Did anyone suggest during the course of that meeting that a Special Counsel be appointed and he or she investigate Madison less than thoroughly?

A I presume these are to get these issues off the table. No.

Q I'm going to move on to what has been referred to as the second set of the Madison criminal referrals generated by the RTC. These referrals were submitted to the Eastern District of Arkansas U.S. Attorney in October, early October of 1993.

A Is this the set of nine?

Q Correct.

A Okay.

Q What is Donna Henneman's chain of command, supervisory chain of command? Who supervises Ms. Henneman?

A Deborah Westbrook and me, but in that order. Deborah Westbrook is her immediate supervisor.

Q If Ms. Henneman requested that the RTC submit the nine criminal referrals generated in October of '93 to the Department concurrently with its -- with their submission to the U.S. Attorney's Office, would that have been beyond her authority at the Department of Justice?

A I don't know why she would do it. My understanding,

again based on the conversation we discussed -- we raised earlier today was that Ms. Lewis had indicated a concern about the case not moving forward and our agreement was to take anything she had and hold it for the new U.S. Attorney and make sure it got to the new U.S. Attorney.

So I'm just not aware of Donna having -- and as late as October when Paula Casey was on board, and I mean, given whatever we had, I don't know why Donna would have sent me another copy. We don't act -- because we don't act on them.

Q The Department of Justice --

A The Executive Office for U.S. Attorneys. You know, if we were to appoint -- passed a recusal where it was with the Criminal Division, we could have said, send it, we'll take it up and we'll give it to the Criminal Division. I presume since this is October, we are not there either. So I don't understand.

Q Do you know what happened to the summaries of criminal referrals that were concurrently sent to Justice, apparently directly to Ms. Henneman, what happened to those referral summaries?

A I didn't know there was an issue around that, so, no, I don't.

Q Okay.

Mr. Fishman. I'm sorry. Did you mean to ask -- do you mean to ask what happened to the physical documents or what

happened to the substance? I think you may have asked a different question than he answered.

Ms. Garcia. The physical documents and the substance. Well, actually I know what happened to the substance. The physical documents.

Mr. Fishman. He sounded like he was answering the physical documents.

The Witness. I was, and I had never known that there was an issue around them not being apparent, available. Did you -- I'm sorry.

BY MS. GARCIA:

Q I'm sorry. The issue is that they were -- the summaries of the criminal referrals and the nine criminal referrals were submitted to the Department of Justice, the Executive Office concurrently with their submission to the U.S. Attorney in the Eastern District of Arkansas. The summaries were submitted to Donna. I can produce the documents if that is necessary, but let me represent to you that they were.

A Okay.

Q Do you know what happened to those documents?

A No.

Q They were never brought to your attention?

A You know, if they were, it was as a pack and I looked at them and I probably thought, what am I supposed to

do with these, because I don't have anything to do with them, or I might have looked at her and said, send them to Paula Casey.

Q Mr. Moscato, let me ask a couple of final questions here, broad questions. I have to apologize for that but they have to be asked.

Have you ever in substance or in words been directed to pursue the Madison investigation or anything related to the Madison investigation less than thoroughly?

A No. To clarify, I've never been directed to pursue it. It's not within my compass as Director of EOUSA.

Q Has anyone ever indicated to you in substance or in words that the Department of Justice had plans to investigate Madison less than thoroughly?

A Not just no, but it is ~~just -- and I recognize~~ that you're asking the broad question for a purpose. It is beyond the pale for that to happen. Go back to that meeting that we have talked about a lot, raise that in that context and everybody around that table starting with Phil Heymann walking out and with Jo Ann right behind him; that is just not going to happen in the Department of Justice.

Ms. Garcia. Okay. I appreciate very much you being here with us today.

I have no more questions for the moment.

Mr. Clark. Is there anything that you wish to ask?

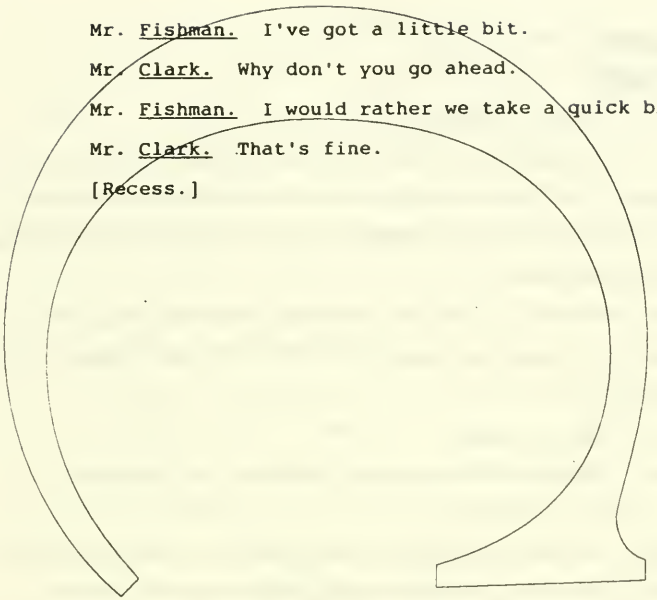
Mr. Fishman. I've got a little bit.

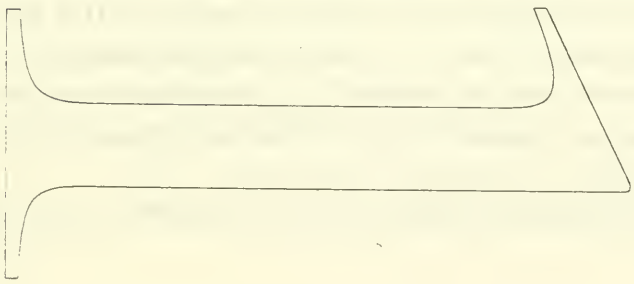
Mr. Clark. Why don't you go ahead.

Mr. Fishman. I would rather we take a quick break.

Mr. Clark. That's fine.

[Recess.]





RPTS WHALEN

DCMN PARKER

BY MR. FISHMAN:

Q Mr. Moscato, I just want to follow up and clarify a few points that are probably clear to everyone else in the room, but I just want to make sure that they are fully set out in the record here.

You started, by the way, by saying that your current position is Director of the Executive Office of Immigration and Review?

A That's right.

Q That's still with the Department of Justice?

A Yes, it is.

Q And with respect to some questions that Mr. Clark asked you very early in the deposition about the Office of Legal Counsel and the Office of Legal Counsel in the Executive Office of U.S. Attorneys, the Office for Legal Counsel is a separate component headed by an Assistant Attorney General?

A Let me just take a minute, if I might. The Office of Legal Counsel looks like a House counsel's operation for the Department of Justice. It is far more even than that. The Office of Legal Counsel fulfills the Attorney General's constitutional responsibility to advise Cabinet members and the President with regard to legal matters.

As a matter of practice, custom, now tradition, when the

Office of Legal Counsel speaks and writes formally, it writes for the executive branch of government and it receives inquiries from across government and when it speaks, it's final as far as the executive branch goes. So if the, as I recall one instance, if the Inspector General and the Solicitor of Labor be in disagreement, they will write sometimes to the Assistant Attorney General in charge of OLC and ask for his legal answer. He gives it. That's over as far as the executive branch goes.

So it's a very small but very, very senior and powerful office and that's why I reacted, I think, fairly strongly when you asked me about it because they are different. The Office of Legal Counsel within the Executive Office for U.S. Attorneys has a very important function, but it is specific to the United States Attorneys and the legal advice to them.

Q So, and that's the Office of Legal Counsel is sort of a subpart of the Executive Office of U.S. Attorneys?

A Yes, it is. That's right.

Q So if Jean Lewis, for example, was trying to reach the Office of Legal Counsel in the Executive Office for U.S. Attorneys and was mistakenly -- and was directed to the Office of Legal Counsel currently headed by Walter Dellinger, that would simply be a mistake?

A Yes.

Q And so if the Office of Legal Counsel had no record

of the RTC referral, that would make complete sense because they wouldn't be involved in that?

A The Dellinger office, yes.

Q Now, let me quickly run through some of the documents that Mr. Clark showed you. First, starting with the document that's marked 006641, that's an urgent report sent to the Department on October 7, 1992, correct?

A Yes.

Q From Mr. McWhorter to the Attorney General, the Deputy Attorney General and the Associate Attorney General?

A As well as.

Q And copies to whom?

A Bob Mueller, the Assistant Attorney General in charge of the Criminal and Paul McNulty, the head of Office of Policy and Communications, Public Affairs Office.

Q Do you know simply as an aside whether that Mr. McNulty is the same McNulty that, who now works for Representative McCollum who is a Member of the House Banking Committee?

A I think that's the same Mr. McNulty.

Q An urgent report, forgetting about the subject matter of this urgent report, how many urgent reports come from EOUSA to the top officials of the Department in a week or a month?

A It will vary. There are weeks where there are one

or two. There are weeks where there are 10 or 12 or 15. There are a lot of urgent reports that go up and they go up on a regular basis and frankly we devote a lot of attention to moving them through EOUSA quickly.

Everybody in the process is aware that they have got to move fast because the whole point of them is to get the Attorney General the information quickly. So Deborah knew, for instance, when she worked for me that if I wasn't there she was to sign it and get it upstairs because the paramount importance was getting it to the decisionmaker and the other truth is probably not enough of them go up because individual U.S. Attorneys have to make that decision and they probably don't err enough on the side of sending as many as they should.

Q Although I suspect that some of them send too many and some send too few?

A Yeah, that's true. That's very true.

Q Okay. At the bottom there are a series of initials and a date, correct?

A Yes.

Q It's L.S.M., right?

A Larry S. McWhorter.

Q And after his set of initials is?

A D.C.W..

Q Who is?

A Deborah Westbrook. Deborah Crenshaw Westbrook.

Q And after her is?

A A.D.H., who I presume to be Donna Henneman.

Q Okay. What conclusion do you draw from that series of initials being on this document?

A That's the -- well, it's down on the lower left-hand corner in what appears to be the -- it basically says this is the document that Larry McWhorter signed, that Deborah prepared, that Donna Henneman typed. It goes in the words and the date 10-7-92, so that is the date it came up. Hopefully with urgents they also should have been written the same day they come up so it should have all taken place on the same day. This goes into a chronological file listing on urgent and sensitive reports and goes into LSM files, which is Larry McWhorter's files as well.

Q You recall Mr. Clark showing you the document that is 006642?

A Right.

Q And he showed you with that a fax cover page, perhaps Mr. Clark.

Mr. Clark. 7087 is the number.

BY MR. FISHMAN:

Q 7087, which you previously looked at, was a fax sheet from Mack Dodson, the U.S. Attorney in Little Rock to Donna Henneman; do you remember that?

A Yes.

Q Mr. Clark asked you if you knew why that would have come to Donna Henneman on October 6th and I believe you testified that you didn't know why she would have gotten it; is that fair?

A Yes. Exactly what I said.

Q Okay. Now that you have seen that the urgent report October 7th says attached is a copy of a referral received by the U.S. Attorney from the RTC, does that refresh your recollection or clear up why Donna Henneman would have received that fax?

A Well, again, it seems to suggest very clearly that this is the attachment that is referred to here. And it was this, probably a conversation and this thing that generated this October 7th.

Q When you say this thing, it's the fax page 7087 together with the 22 pages to which it refers that is referred to in the urgent report?

A That's correct.

Q All right. Now, the next document is a letter dated October 16, 1992, from Mr. Banks to the special agent in charge of the FBI in Little Rock, correct?

A Yes.

Q And that's document 006665 to 66?

A Yes.

Q And in that letter, Mr. Banks -- what did Mr. Banks essentially tell the special agent in charge about how Mr. Banks wanted to handle the referral during the month prior to the election?

A He made it clear to Special Agent Pettus that he was not going to participate in an investigation regarding this referral.

Q Before the election?

A Prior to the election. Prior to November 3rd, 1992, and he went on to say that Pettus could communicate to the FBI officials that that was what he had said.

Q Okay. And that letter was then sent up the chain with a similar urgent report four days later?

A Right.

Q With the -- in the document 006667?

A That's correct.

Q Now, with respect to the recusal and Mr. Banks' letter of January 27, do you recall what day the inauguration was?

A Generally 20th or 21st.

Q Of January?

A Yes.

Q By the 27th when Mr. Banks sent this letter of January, 27th of January, who of the political appointees from the previous administration was left?

A Stuart Gerson; I believe.

Q So --

Mr. Clark. Well, in the entire Department?

Mr. Fishman. The -- were there -- in the political leadership of the Department.

The Witness. There had been a memo, a directions to Presidential appointees and appointees to leave by January 20th. There had been some exemptions or excerpts -- exemption -- U.S. Attorneys were exempted. I think U.S. Marshals were exempted. I don't remember who else. So basically by the 20th or 21st, the main building, main Justice was -- folks had left. There were no senior political leaders there except for -- no, I'm blank. Gerson, who had switched from head of the Civil Division to being the acting, I don't know when that happened to be honest with you.

BY MR. FISHMAN:

Q To becoming the Acting Attorney General?

A Yes.

Q Okay.

A It was around there.

Q Any reason to believe that it happened any earlier or later than the end of the previous administration?

A Well, it happened upon the -- my memory is it happened upon the foundering of the nomination of Ms. Baird and that may or may not have been consistent with the end of

the administration. It's very possible that Stu was appointed earlier than that period.

Q Was there a deputy?

A No there was not.

Q Was there an associate?

A No.

Q Was there an Assistant Attorney -- politically appointed Attorney General in charge of the Criminal Division?

A That was Jack Keeney, I believe.

Q Who is Jack Keeney?

A He is a long-time senior career Deputy Assistant Attorney General in the Criminal Division.

Q How long has he been there?

A I don't think calendars go back that far. God, I hope Jack doesn't see that. Jack has been there a very long time and has served with distinction during the interregnum between Presidentially appointed Assistant Attorneys General of the Criminal Division.

Q During administrations of both parties?

A Yes.

Q Anybody to your knowledge ever questioned either the prosecutorial acumen or the integrity of Jack Keeney?

A No.

Q And just to make sure that we are clear, Mr. Clark showed you a document before. I'm not sure I have it handy,

but it was a recusal memorandum from Doug Frazier to Stuart Gerson. What we might have called an action memorandum.

A I don't think so. There was a question about what an action memo was, but I don't know that I saw the memo in question. Or at my age, have I already forgotten it? I saw me to Frazier to Gerson. And Keeney to Frazier.

Mr. Clark. This document I believe you are referring to.

Mr. Fishman. Yes. That's it. Let me show you --

The Witness. That's this one.

BY MR. FISHMAN:

Q What we have marked 006671 and that's a memo from you through Frazier to Gerson on February 9th, right?

A Uh-huh. Yes.

Q Explaining basically that the U.S. Attorney in the Eastern District of Arkansas, Chuck Banks, wanted to recuse himself, correct?

A That's right.

Q And am I right that it certainly appears that what happened was that before any action was taken, the matter was referred back to Jack Keeney by either Frazier or Gerson for some input?

A That's correct.

Q And Keeney, having received that input, having asked for that input, received it.

Let me show you what's marked as 6678, which is a memo to Jerry McDowell, the Chief of the Fraud Section, correct?

A Yes.

Q From a trial attorney named Mark McDougal presumably in the Fraud Section. Correct?

A Yes.

Q Discussing the RTC referral?

A That's correct.

Q And on page 6682 there is a recommendation?

A Yes, there is.

Q Based on the recommendation -- and the recommendation was?

A The recommendation is more clearly stated -- I won't do the comparison. The recommendation is clearly stated and it says that -- let me read:

"Based solidly upon available information and in light of applicable law and current Fraud Section's standards for prosecution, the conduct of James B. McDougal, Susan H. McDougal and Lisa Anspaugh" -- A-N-S-P-A-U-G-H -- "as described in the criminal referral does not appear to warrant the initiation of a criminal investigation."

This is the line attorney to the head of the section.

Q And Mr. Keeney then sent that memo back to Mr. Frazier on March 19th?

A That's correct.

Q To your knowledge, did any member of the Department of either political party, the Democratic, incoming Democratic administration or the outgoing Republican administration cause any influence, untoward influence to be brought on that decision so far as you know?

A No.

Q Now, is it fair to say that -- it is simply possible that for the next month or two that this document simply fell through the cracks and because of no deputy and not a lot of staff in the upper reaches of the Department?

A I don't know if it's fair to say. It is certainly one possible conclusion and Doug could probably tell you more. I just don't know.

Q And Mr. Frazier is now where?

A Mr. Frazier is now physically located in his old home district which is the middle district of Florida, but I believe he's on the rolls of the Executive Office for United States Attorneys running the internal evaluation program out of the United States Attorneys. I believe he also -- well, he handles other work as well, but that's his principal task.

Q Let me, you have discussed it in length, the decisions that regarding this referral that took place over the next several months. Let me jump ahead to the recusal issue and the meeting that took place in November of 1993. You testified earlier about a discussion regarding the

question whether the -- if Paula Casey were to recuse herself, whether the case should be taken over by another U.S. Attorney's Office or by the Criminal Division?

A Yes.

Q And you were pushing somewhat in favor of another U.S. Attorney's Office?

A Uh-huh.

Q Is that a --

A Yes.

Q And Ms. Harris was pushing in favor of the Criminal Division?

A Yes.

Q Can you describe -- is this a healthy competition between the U.S. Attorney's Offices and the trial lawyers in the Criminal Division that led you to take this particular role?

A Well, historically, the U.S. Attorneys have considered themselves and been considered increasingly over the years the trial lawyers of the Department of Justice. And I think we certainly have seen that grow over the last decade. The legal divisions at the same time feel that they have a certain degree of size, a certain degree of expertise and a certain degree of capacity to arm a particular problem, especially if it's large, especially if it's multi-district with resources that may be individual or small United States

Attorneys Office can't bring to bear.

So there is a sort of a natural tension that exists between the two. As I indicated earlier, one of my reasons for offering Ms. Casey my presence at the meeting was that she was brand-new and this was a meeting at which she clearly saw herself being confronted by the second ranking man in the department and the Criminal Division in the person of Ms. Harris, who is a very bright, able, lawyer, and the whole Criminal Division. So I went along to help one of my clients and in that discussion raised the question of whether there had to be a referral it couldn't equally be made to the U.S. Attorney in Missouri as well as bringing it back here.

And I believe Ms. Harris and others in the Criminal Division made it perfectly clear that they thought that given the state of the case, given the degree of concern that had been raised around it, given the degree of concern in the country, that perhaps this is one that needed to be handled with the full resources and sort of the full capacity of the Department's central office to handle a big case, that this was going to have a lot of interest and this needed to be brought home, if you will, to this Criminal Division and we just went around on that a little bit.

I want to be clear just as I suggested it be in another U.S. Attorney's Office or be retained by Ms. Casey because I thought that was the best answer, Ms. Harris argued strongly

because she felt that the Department could do the best job on getting this done right if it was brought into the Criminal Division where she could give the resources to it.

Q Do you have -- to your knowledge does Ms. Harris know the President of United States?

A No, I believe she said at that meeting she did not.

Q What about Phil Heymann who was also present at that meeting?

A I don't know whether he knows the President or not.

Q What about, I believe you said Mr. Urgenson might have been at that meeting?

A Yes.

Q He was a Deputy Assistant Attorney General in the Criminal Division?

A Yes.

Q Supervising the Fraud Section among others?

A That's correct, I think. I'm not entirely certain.

Q And Mr. Urgenson had been there since the previous administration?

A That's correct.

Q A career prosecutor as far as you know?

A That's correct.

Q And Mr. Keeney, of course?

A Long-time career prosecutor.

Q Any reason on your part to believe that anybody who

was present at that meeting from the Criminal Division or main Justice had any real or apparent conflict of interest that in your judgment would have precluded them from fully and fairly evaluating the merits of this case at that time?

A Absolutely not.

Mr. Fishman. That's all I have. Thanks.

Mr. Clark. Hopefully this will not take very long.

EXAMINATION BY MR. CLARK:

Q You were just asked a couple of questions about the report that was prepared for Gerald McDowell concerning the criminal referral. These are very simple questions, I think. The author, Mark J. MacDougal, do you know that person?

A I don't, no. I think I'm making the assumption that counsel made as well that he's the line attorney in the Fraud Section, but I do not know him personally.

Q Have you yourself ever worked in any prosecutorial components of the Criminal Division, the Fraud Section, Public Integrity, any section like that?

A No. My only trial experience or my trial experience is Tax Division for the Department of Justice on the civil side.

Q And --

A And a long time ago.

Q Approximately what years?

A 1976, 77.

Q Since then you have been on more of what a layperson might call the administrative side?

A Yes.

Q Okay. And I just want to clarify, hopefully very briefly, the November 3rd meeting, at the conclusion of that meeting Ms. Casey had not stated an intention to recuse herself?

A That's correct. I believe that's right, yes.

Q And your impression was that the personnel from the Department expressed in no uncertain terms that she should come to that conclusion and recuse herself?

A I think it's fair to say that the Criminal Division folks had made it perfectly clear. I think, although characterizing the Deputy is a little harder, especially from a distance of a couple of years, but my sense as I reconstruct it was that he thought so, too, but was not prepared to direct it -- at least did not direct it that he could have.

Q Did Ms. Harris take the laboring oar in representing the Department's position?

A Well she was the Assistant Attorney General for administration she certainly --

Mr. Fishman. I'm sorry. Criminal Division.

The Witness. I'm sorry, what did I say? Administration. It comes naturally. As the Attorney General for the Criminal Division, she certainly represented the

Criminal Division and was an advocate for the Criminal Division's position and a good one.

Had the Deputy not been in the room arguably as the -- you know, as the head of the Criminal Division, she would come as close as representing a departmental position as anyone, but the Deputy, in fact, in that room held the Department's position. Does that make sense?

BY MR. CLARK:

Q Can you think of any reason why the meeting necessarily included Mr. Heymann instead of being conducted by Ms. Harris?

A Sure. He's Deputy Attorney General. I guess that's not apparent.

Q Did he contribute anything --

A I think he took part in the discussion. He didn't sit silent. The only -- the point I guess I made badly was I don't recall him sitting there at the end -- at the front of the table at the end of the meeting saying, "Okay, having listened to all the arguments, Paula, either do or do not recuse." There was not that decision.

Q Very good. And I should have asked this earlier: Do you recall any discussion of Ms. Casey's personal relationship with Mr. and Mrs. Clinton at that meeting?

A I -- all I recall is Ms. Harris saying I don't know the President personally.

Q Ms. Harris?

A Yeah. And I think that was in counterpoint to at least the suggestion that Paula at least has met the President and I think that was -- I can't -- I'm sorry. I have the impression that at some point Paula indicated she knew the President, but was not a friend. I don't know where I got that from, so let me let that one sit.

Q Do you recall from the meeting there being any discussion of allegations being made by a gentleman named David Hale?

A David Hale was a name that was prominent at the time, but allegations about Ms. Casey?

Q No. Allegations concerning Mr. Clinton, Mr. McDougal, Madison Guaranty.

A That was certainly -- I mean, it was part of the context in which we were operating, but I don't recall that being the core.

Q Okay. When your office creates these action memos that you send up to the Deputy Attorney General, do you have a log in the executive office?

A Which action memos are we talking about?

Q For instance, the February 3rd -- I'm sorry.

A Let me help you. We have a -- let me help you. We have a chron file. You would see references to chron file in the executive office. You saw, I think we talked about a

chron file on Larry McWhorter. That was a chronological file of things that the director of the office signs so there was one for Larry.

There would be one, I think, you could find for me. I'm sure there is one for Carol, but there are also other file copies of things.

Q My point is this document, you would agree, is sent to someone with a request that they act upon it?

A Sure.

Q Okay. Now --

A Let me look at the bottom.

Q You can have this one.

A Okay.

Q In fact, if you look at page 6672, there's a space where --

A Yeah.

Q -- a person is supposed to indicate some action taken, correct?

A Basically, we sent that up, although we didn't say it as clearly as we might.

Q My question is did the Executive Office for the U.S. Attorneys maintain some sort of log or control where you noted that these were sent up and then you would later indicate that they had, in fact, been acted upon?

A Yes.

Q Okay. Can you describe that for me, physically?

A Yeah. I want to say it comes in the form of a chart with boxes basically. Basically, box number one would have in it, this is the recusal from this person as of this date and then it would have stages, you know, it came in on a certain date, got out of here on a certain date, went to the Deputy, went to the Criminal Division, whatever, and then we track it with a final conclusion.

Q Is it your recollection that it was like printed standardized forms or more like a loose-leaf notebook?

A I think we ran -- I think it lived in a computer and got printed out whenever we needed to, but Ms. Westbrook can tell you more.

Q She would have more immediate contact with that?

A Yes. It was run out of her office.

Q She and Ms. Henneman probably?

A Right. I think it was sitting in there like a little program and they just kept updating it in the computer and printed it when they needed it.

Q Finally, please don't take this personally, the circumstances of your move from the Executive Office to your current position, they in no way relate to anything concerning your office's -- the handling by the Executive Office for U.S. Attorneys of any of the matters that we have spoken about today?

A In no way.

Ms. Garcia. I have a couple of questions.

First, I would like the record to note that I believe Mark J. MacDougal's name is spelled M-A-C capital D-O-U-G-A-L; James and Susan McDougal's, on the other hand, last name is spelled M-C, capital D-O-U-G-A-L, just for the record.

Mr. Clark. Just finally, I don't want to clutter this too much, I would like to echo the statements earlier. Thank you very much, Mr. Moscato, for coming in. I'm sorry that it has taken this much time, but hopefully, we are concluded.

Mr. Fishman. I'm sorry. I think Ms. Garcia had --

Ms. Garcia. I had one more question.

Mr. Fishman. And I had two.

The Witness. I rather had hoped you were correct.

Ms. Garcia. It's a good try.

Mr. Clark. Nevertheless I thank you.

The Witness. Thank you, sir.

EXAMINATION BY MS. GARCIA:

Q During the November 3rd meeting you indicated that there is discussion about whether to refer the investigation of Madison Guaranty to another U.S. Attorney's office outside the Eastern District of Arkansas or to keep it in-house in main Justice?

A Bring it into main Justice.

Q Bring it into main Justice and appoint special

counsel to lead the investigation of Madison Guaranty.

A Well, if I can -- I'm sorry. You had a question behind that.

Q First, is that the correct characterization of what happens when a case is brought in-house?

A I want to parse that a little bit. I think the Criminal Division folks felt that there was -- we were discussing an option which was is Ms. Casey going to recuse and is the case going to come to the Criminal Division. I believe they felt that was the only realistic scenario that made any sense. And I had, until my memory was refreshed by Mr. MacDougal's memo, forgotten that I raised the question in the alternative. I'm sure I did. I think I did.

Mr. Fishman. Mr. McDowell's memo.

The Witness. Jerry McDowell's memo where he said that. So what was then discussed was -- it's sort of binary. First question, is Ms. Casey going to recuse. The question of where the case goes is not at all related to that and doesn't affect it at all. Just is she going to recuse herself and her office.

Then next question, once that's decided in the affirmative, is where does the case go. I raised the option of it going to other U.S. Attorney's Offices and the Criminal Division felt strongly it should be the Criminal Division and argued that.

BY MS. GARCIA:

Q If a case is brought in-house and referred to the Criminal Division of Justice, does that mean that a special counsel is then appointed to pursue that investigation?

A Not necessarily, because -- you're not going to be able to track it if I doodle.

Mr. Fishman. Describe it orally.

The Witness. If the case comes to the Department, somebody is designated as either the United States Attorney in charge of that case or the Assistant Attorney General in charge of that case.

For instance, it could be taken by or referred to Jo Ann Harris as the Assistant Attorney General in charge of Criminal Division under her authority to prosecute that case or an individual could be named as the Acting United States Attorney in that district and it could be handled that way and that person would report directly to the Deputy Attorney General and I've seen that happen on recusals or a third scenario I think what did happen here is a person in the Criminal Division, Jo Ann Harris, takes it as the head of Criminal Division and redelegates down to somebody in the Criminal Division who actually handles the case and reports to her. Now, after that, the question of whether you call that person Special Counsel or not tends to be secondary.

BY MS. GARCIA:

Q Okay. Thank you for the explanation.

What justification might lead to keeping a case with such as the investigation of Madison Guaranty in-house rather than appointing -- referring it to another U.S. Attorney's Office?

A I think -- and again, here's a point of disagreement, but there are valid points on both sides. I think the Criminal Division has historically felt that given its size, given the range of expertise of the individuals it recruits, and given the resources it can drop on a case at any given moment because it does have 400 lawyers, that it is the place that can best handle big, complex, difficult cases.

So from the Criminal Division's perspective that is, in essence, that division functioning at its highest level. Take the tough case, get the resources on it, use the expertise you've got, use your mass capacity and get it done. U.S. Attorneys, especially more recently rather than 20 years ago, many of those offices have grown in size and expertise and now more readily say, "Wait a minute, wait a minute. I got the capacity to do this. We are not just three guys in a storefront. We got good lawyers, too."

So that's the argument that goes back and forth, but I think that, in essence, that's intramural -- that's the intramural league inside the Department of Justice arguing over who gets to keep the ball. That's really all it is. There's a lot of that that goes on.

Ms. Garcia. That's my final question.

Mr. Fishman. Okay.

The Witness. You're tired of very long answers.

Mr. Fishman. I apologize, Tony, for having one thing I want to clear up, two things.

EXAMINATION BY MR. FISHMAN:

Q One is Ms. Garcia mentioned Special Counsel. When a Criminal Division -- you said there were 400 lawyers in the Criminal Division?

A Correct.

Q Most of them trial lawyers of one sort or another?

A Yes.

Q And they prosecute 400 or 500 cases a year?

A Right.

Q A Special Counsel, Mr. Fiske was a Special Counsel?

A That's right.

Q That is an entirely different animal, right?

A Absolutely.

Q When the Criminal Division, as it did in this case, takes over, it is lawyers somewhere in the Criminal Division reporting up the chain?

A To someone, depending on where they take it.

Q Okay. And in this particular instance, it was a fraud case that was being handled by the Fraud Section?

A Yeah. And in that light it would have been pretty

standard to have reported to Jo Ann, but I'm not sure, to be honest with you, that there wasn't some kind of a Special Counsel title used, but I'm not -- but even if it was, it wouldn't have had the same meaning as what we have taken to mean -- that title to mean in other circumstances. It would have been no more than Department lawyers. Pretty good in its own.

Q The last thing I want to ask and I apologize. I forgot to ask it before. Mr. Clark asked you about the formal recusal papers signed by Mr. Margolis for Mr. Heymann on December 22nd. You remember that?

A Yes.

Q And he asked if there was anything unusual about a three-week delay from the time the memo was generated?

A That's correct.

Q As of the date of November 5th when Paula Casey signed her -- sent her letter to Mr. Heymann recusing herself from the Hale matter and any related matters?

A Yes.

Q That's document 209, correct?

A Yes.

Q Was there any doubt in anybody's mind in your knowledge who was involved in this decision that the signing of papers by Mr. Margolis or Mr. Heymann was a mere formality at this point?

A I always assumed that it was, or would have if I thought about it.

Q In fact, I guess your office didn't prepare that formal recusal memo for almost a month?

A That's right. December 1st.

Q Anything in particular or just the press of business?

A I'm not stunningly delighted to see that delay, but I think no more than the press of business. My memory, dim as it is, is that the Criminal Division did not wait on the formal -- until December 22nd to start. My sense is they started sooner, didn't they?

Q In fact, Ms. Casey's letter reflects that indictments had been returned two months earlier, right?

A Okay. Yes.

Q Presumably, they had a trial date coming up?

A I don't know. I just do have there memory that they went pretty quickly because that was the whole point of the exercise.

Mr. Fishman. I have nothing further.

Mr. Clark. One more.

EXAMINATION BY MR. CLARK:

Q On the November 3rd meeting, do you recall any discussion in the meeting about the fact that one of the criminal referrals named the Bill Clinton campaign fund as a

target?

A There was some discussion of each of the nine, but frankly I cannot now tell you what was anything. I remember they went through them a little bit. Not in terrible detail but I do not recall the specifics.

Q Did anyone actually have copies of the referrals?

A I don't recall copies at the table.

Q How was -- who do you recall discussing the substance of the referrals?

A Paula.

Q Was there anyone else who seemed to be knowledgeable about the substance of the referrals?

A If they were, they weren't manifesting it.

Q Okay. And did -- do you recall her specifically mentioning the Clinton campaign fund?

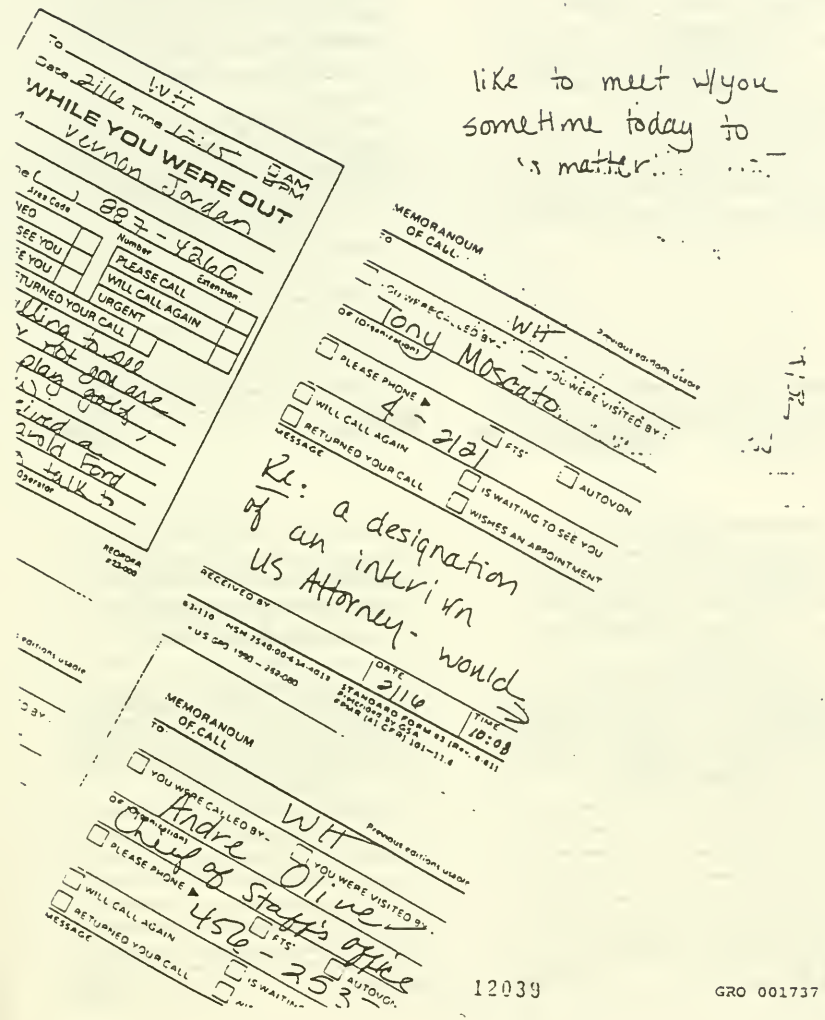
A As she went through some of it, but I cannot tell you the specifics at all.

Mr. Clark. I am finished.

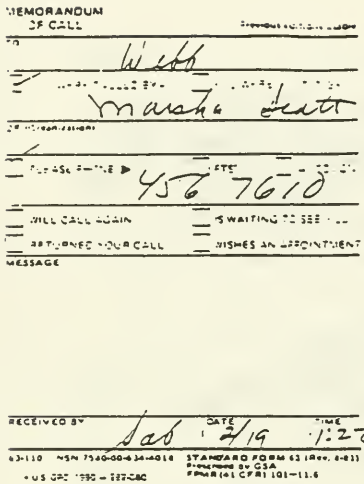
Ms. Garcia. Thank you.

The Witness. Thank you.

[Whereupon, at 4:04 p.m., the committee was adjourned.]


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URGENT
like to meet w/you
sometime today to
discuss matter
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WH
Tony Moscato
4-2121
PLEASE PHONE
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RETURNED YOUR CALL
IS WAITING TO SEE YOU
WISHES AN APPOINTMENT
Re: a designation
of an interim
US Attorney - would
DATE 2/16
TIME 10:08
MEMORANDUM OF CALL
WH
Andre Oliver
Chief of Staff's office
456-2532

12039



MEMORANDUM OF CALL

To: Webb

From: Marsha Scott

Phone: 456 7610

DATE

TIME

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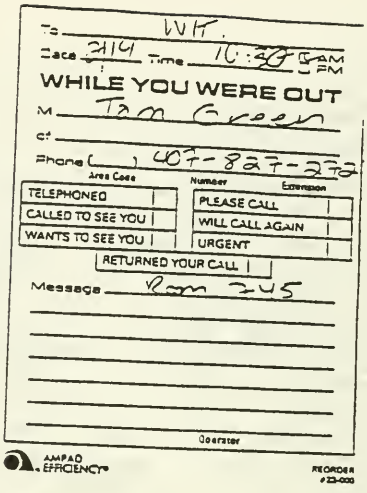
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MESSAGE

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• U.S. GPO: 1990 — 287-080



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M: Tom Green

of:

Phone: ( ) 407-827-2?2

Area Code Number Extension

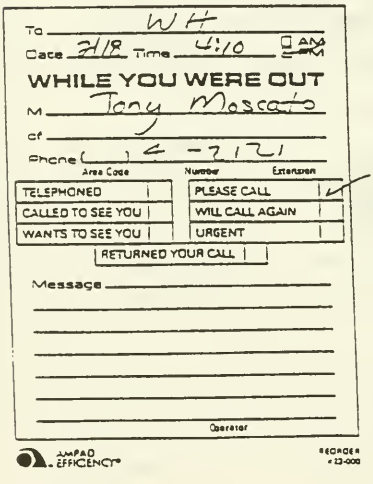
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Message: Rm 245

Operator

AMPAD EFFICIENCY

RECORDER #23-000



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M: Tony Moscato

of:

Phone: ( ) 4-7121

Area Code Number Extension

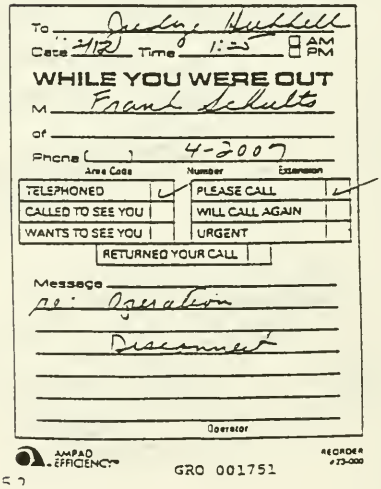
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Operator

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Date: 2/12 Time: 1:25 AM PM

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M: Frank Schultz

of:

Phone: ( ) 4-2007

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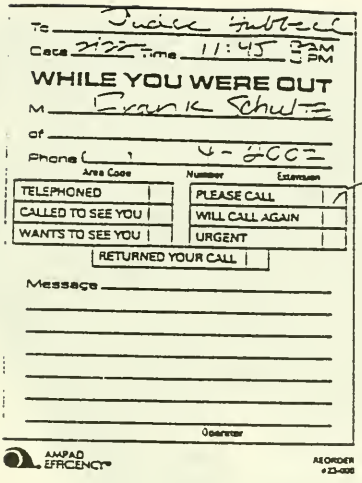
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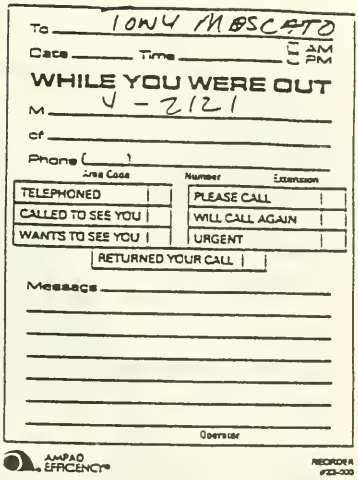
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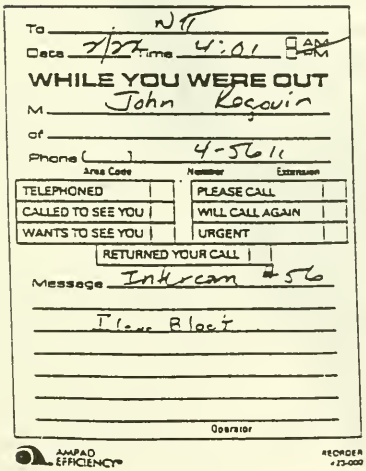
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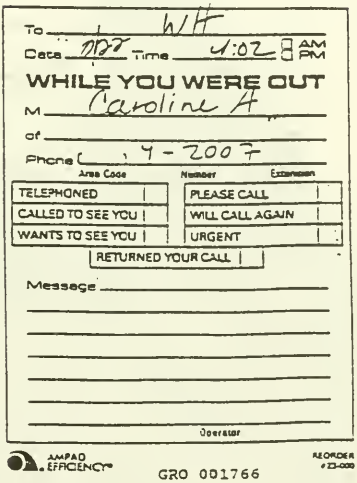
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WHILE YOU WERE OUT
M Frank Schultz
of
Phone ( ) 4-4002
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WANTS TO SEE YOU | URGENT
RETURNED YOUR CALL
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Operator
AMPAD EFFICIENCY
REORDER #23-000



To TONY MOSCATO
Date Time AM PM
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Operator
AMPAD EFFICIENCY
REORDER #23-000



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M John Kocsuin
of
Phone ( ) 4-5611
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Ilene Black
Operator
AMPAD EFFICIENCY
REORDER #23-000



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M Caroline A
of
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Operator
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OCT 20 1992

Referral from the Resolution Trust Corporation

(Initialed) L S. M.

William P. Barr
Attorney General

George J. Terwilliger, III
Deputy Attorney General

Wayne A. Budd
Associate Attorney General

Laurence S. McWhorter
Director
Executive Office for
United States Attorneys

Designation: Criminal Matter

Security Classification: Sensitive

Originating Unit: Office of the United States Attorney
Eastern District of Arkansas
Little Rock, Arkansas 72203

Clarification and Follow-up: Charles A. Banks
United States Attorney
Eastern District of Arkansas
Little Rock, Arkansas 72203
FTS: (501) 324-5263

Attorneys in Main Justice Familiar with the Matter: none

Synopsis: This is an update to the previous Urgent Report dated October 7, 1992 (copy attached). Also attached is a copy of a letter from United States Attorney Charles A. Banks, Eastern District of Arkansas, to Don Pettus, Special Agent-in-Charge, Federal Bureau of Investigation, regarding a referral from the Resolution Trust Corporation. The referral involves Governor Bill Clinton and his wife Hillary Clinton who are listed as witnesses and may have information regarding suspected criminal activities by Madison Guaranty Savings & Loan.

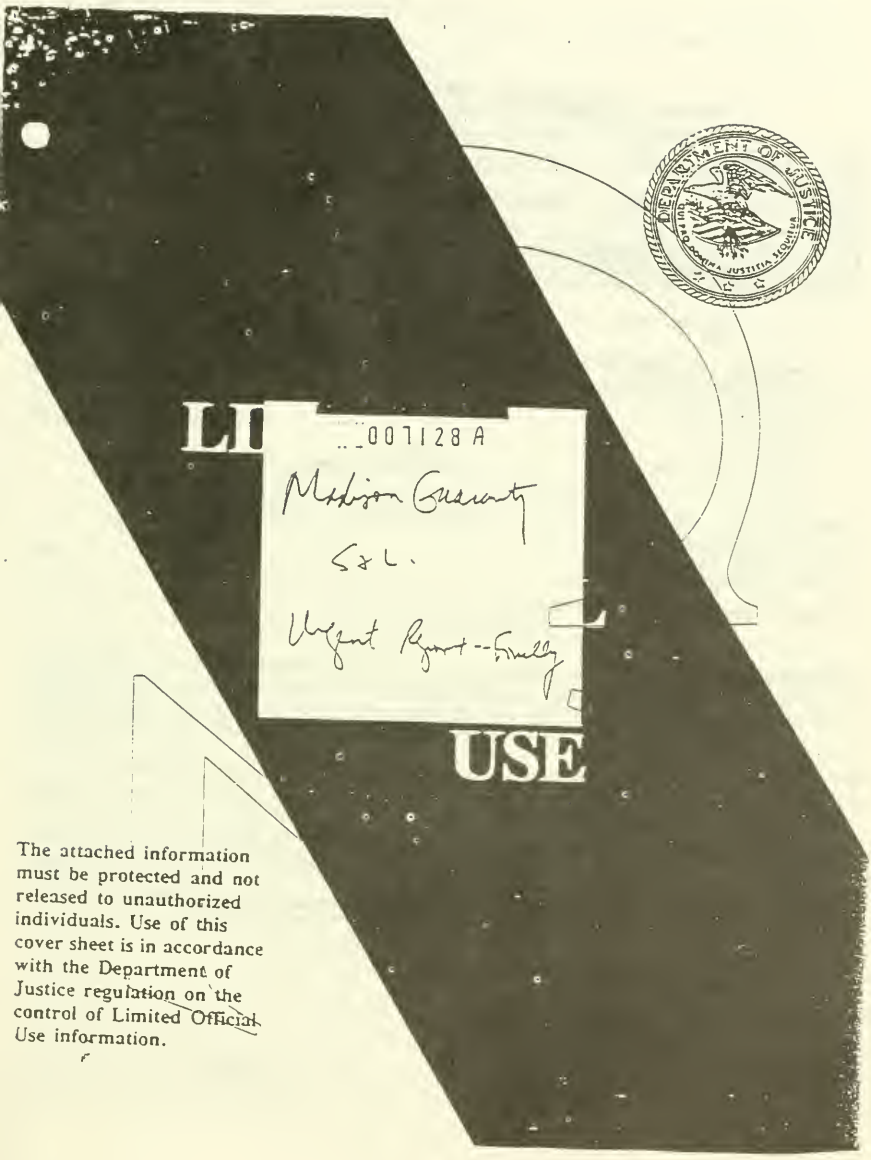
Attachments

cc: Robert S. Mueller, III
Assistant Attorney General
Criminal Division

Paul McNulty
Director
Office of Policy and
Communications

LSM:DCW:sj;10/20/92
Urgent/Sensitive Report Chron
LSM Chron

00663



The attached information must be protected and not released to unauthorized individuals. Use of this cover sheet is in accordance with the Department of Justice regulation on the control of Limited Official Use information.

cc:
RSS
McDowell

DEPARTMENT OF JUSTICE
EXECUTIVE ~~SECRETARIAT CONTROL~~ DATA SHEET

From: McWHORTER, LAURENCE S., DIRECTOR, EOA
To: AG., OAG, ASG
ODD: NONE
Date Received: 10-07-92 Date Due: NONE Control #: X 921007147 S
Subject & Date
10-07-92 "SENSITIVE" MEMO ATTACHING A COPY OF A REFERRAL RECEIVED BY THE U.S. ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF ARKANSAS FROM THE RESOLUTION TRUST CORPORATION CONCERNING APPARENT CRIMINAL ACTIVITIES INVOLVING A SAVINGS AND LOAN ASSOCIATION.

	Referred To:	Date:		Referred To:	Date:	
(1)	OAG	10-07-92	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRIV:
(4)			(8)			15
	INTERIM BY:			DATE:		OPR:
	Sig. For: NONE			Date Released:		EHI

Remarks
CC INDICATED FOR CRM, OPC.
INFO CC: OOAG (RAPHAELSON)
(1) FOR INFORMATION.

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OLA CONTACT:

FILE:

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

007129

930007070

Resolution Trust Corporation
Kansas City Consolidated Office
4900 Main Street, P.O. Box 419570
Kansas City, Missouri 64141 (816) 531-2212 (800) 365-3342

September 1, 1992

RECEIVED
SEP 2 1992
U.S. ATTORNEY'S OFFICE
LITTLE ROCK, ARKANSAS

The Honorable Charles A. Banks
United States Attorney
Eastern District of Arkansas
U.S. Post Office and Courts Building
600 W. Capitol, Room 331
P.O. Box 1229
Little Rock, Arkansas 72203

Re: #7236 Madison Guaranty Savings & Loan
Little Rock, Arkansas - In Receivership (11/29/90)
CRIMINAL REFERRAL NUMBER C0004

Dear Sir:

Certain matters have come to our attention which may constitute criminal offenses under Federal law. Enclosed is a report of an Apparent Criminal Irregularity.

Information in this referral may have been derived from financial records of customers of federally insured financial institutions. I hereby certify that (A) there is reason to believe that these records may be relevant to a violation of Federal criminal law, and (B) the records were obtained in the exercise of the RTC's supervisory or regulatory functions.

Due to the extensive nature of the exhibits relating to this referral, they are being sent to your office under separate cover.

Please direct any inquiries to the Investigator identified on the referral form, or to Lee O. Ansen, Department Head/Criminal Investigations, Kansas City Consolidated Office.

Sincerely,

L. Richard Iorio

L. Richard Iorio
Field Investigations Officer

Enclosure

RTC
Resolution Trust Corporation

730 - Kansas City Consolidated Office

CRIMINAL REFERRAL FORM

CRIMINAL REFERRAL # C0004

1. NAME AND LOCATION OF FINANCIAL INSTITUTION

Name/#: MADISON GUARANTY SAVINGS & LOAN
Location: 16TH AND MAIN, P.O. BOX 1583
(Street/City/State/Zip) LITTLE ROCK, ARKANSAS 72206

CERTIFICATE NUMBER:

If activity occurred at branch office(s), please identify:

2. ASSET SIZE OF FINANCIAL INSTITUTION: $118,855,000

3. APPROXIMATE DATE AND DOLLAR AMOUNT (PRIOR TO ANY ALLOWANCE FOR RESTITUTION OR RECOVERY) OF SUSPECTED VIOLATION:

Date: (Month/Day/Year)Time frame between 12/84 and 5/85
Amount: Estimated at $350,000 to $1,000,000

4. SUMMARY CHARACTERIZATION OF THE SUSPECTED VIOLATION. Check appropriate box(es)

			X		
	X				
X					

Applicable Section(s) of the U.S. Code:

X		X	
X			

005695

5. THIS MATTER IS BEING REFERRED TO:

FBI, Little Rock, Arkansas
U.S. Attorney, Eastern District, Little Rock, Arkansas

6. PERSON(S) SUSPECTED OF CRIMINAL VIOLATION: Complete subparagraphs (a) through (e) on each individual suspected of criminal activity. (If more than one, use continuation sheet). Include primary suspects only. Individuals who may have knowledge of the suspect criminal activity, but who are not themselves suspected of being involved, should be listed as witnesses under Item 10. Provide any additional details known with respect to prior referrals or affiliations.

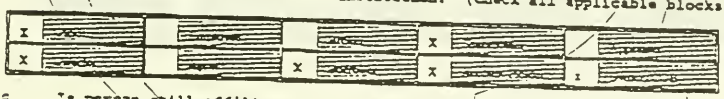
a. NAME: (First/MI/Last) McDougal, James B.

ADDRESS: (Street/City/State/Zip) Current Address Unknown

DATE OF BIRTH: (Month/Day/Year) Unknown

SOCIAL SECURITY NO: Unknown

b. Relationship to the financial institution: (Check all applicable blocks)



c. Is person still affiliated with the financial institution?
____ Yes _X_ No

If No, terminated ____, resigned _X_. Date (Month/Day/Year):

Describe circumstances: (If necessary, use continuation sheet)

McDougal resigned from the Board of Directors in December 1985; however he remained active in the Association's day to day business. He was removed from the Association when it was placed in Conservatorship by the RTC in 2/89.

d. Prior or related referrals:
_X_ Yes ____ No

If Yes, please identify.

McDougal was indicated, tried and acquitted in 1989 on charges stemming from his activities at Madison Guaranty Savings & Loan.

e. Is person affiliated with any other financial institution:
_X_ Yes ____ No

or business enterprise:
_X_ Yes ____ No

If yes to either or both, please identify.

McDougal was a shareholder and Board Member of the Bank of Kingston, which was at one point to be merged with Madison Guaranty; thrift records indicate that the merger was called off due to legal ramifications.

McDougal is a principal in the following business enterprises:

Madison Marketing	Designers Construction
McDougal & Associates	Madison Financial Corporation
Flowerwood Farms, Inc.	Whitewater Development Corp., Inc.
Pembrook Manor, Inc.	Rolling Manor, Inc.
Great Southern Land Co.	Tucker-Smith-McDougal

Smith-Tucker-McDougal Smith-McDougal

6. PERSON(S) SUSPECTED OF CRIMINAL VIOLATION: Complete subparagraphs (a) through (e) on each individual suspected of criminal activity. (If more than one, use continuation sheet). Include primary suspects only. Individuals who may have knowledge of the suspect criminal activity, but who are not themselves suspected of being involved, should be listed as witnesses under Item 10. Provide any additional details known with respect to prior referrals or affiliations.

a. NAME: (First/MI/Last) McDougal, Susan M.

ADDRESS: (Street/City/State/Zip) Unknown

DATE OF BIRTH: (Month/Day/Year) Unknown

SOCIAL SECURITY NO: Unknown

b. Relationship to the financial institution: (Check all applicable blocks)

	[illegible]		[illegible]		X [illegible]		[illegible]
X	[illegible]		[illegible]	X	[illegible]	X	[illegible]

c. Is person still affiliated with the financial institution?
____ Yes _X_ No

If No, terminated ____, resigned _X_. Date (Month/Day/Year):

Describe circumstances: (If necessary, use continuation sheet)

Susan McDougal resigned from the Board of Directors in December 1985, but remained active in the day to day activities of the association's subsidiary operations.

d. Prior or related referrals:
____ Yes _X_ No

If Yes, please identify.

e. Is person affiliated with any other financial institution:
____ Yes ____ No Unknown at this time

or business enterprise:
_X_ Yes ____ No

If yes to either or both, please identify.

Susan McDougal is a principal in the following business enterprises:

Madison Marketing	Designers Construction
McDougal & Associates	Madison Financial Corporation
Flowerwood Farms, Inc.	Whitewater Development Corp., Inc.
Pembrook Manor, Inc.	Rolling Manor, Inc.
Great Southern Land Co.	Tucker-Smith-McDougal
Smith-Tucker-McDougal	Smith-McDougal

6. PERSON(S) SUSPECTED OF CRIMINAL VIOLATION: Complete subparagraphs (a) through (e) on each individual suspected of criminal activity. (If more than one, use continuation sheet). Include primary suspects only. Individuals who may have knowledge of the suspect criminal activity, but who are not themselves suspected of being involved, should be listed as witnesses under Item 10. Provide any additional details known with respect to prior referrals or affiliations.

a. NAME: (First/MI/Last) Anspaugh, Lisa

ADDRESS: (Street/City/State/Zip) Unknown

DATE OF BIRTH: (Month/Day/Year) Unknown

SOCIAL SECURITY NO: Unknown

b. Relationship to the financial institution: (Check all applicable blocks)

[illegible]		[illegible]		[illegible]		[illegible]	
[illegible]		[illegible]	X	[illegible]	X	[illegible]	X

c. Is person still affiliated with the financial institution:
____ Yes _X_ No

If No, terminated ____, resigned ____. Date (Month/Day/Year):

Describe circumstances: (If necessary, use continuation sheet)

d. Prior or related referrals:
____ Yes _X_ No

If Yes, please identify.

e. Is person affiliated with any other financial institution:
____ Yes ____ No Unknown at this time

or business enterprise:
_X_ Yes ____ No

If yes to either or both, please identify.

Anspaugh was allegedly a partner with Susan McDougal in several companies, and assisted McDougal with her "bookkeeping" for the McDougal's various companies including:

Madison Marketing	Designers Construction
McDougal & Associates	Madison Financial Corporation
Flowerwood Farms, Inc.	Whitewater Development Corp., Inc.
Pembrook Manor, Inc.	Rolling Manor, Inc.
Great Southern Land Co.	Tucker-Smith-McDougal
Smith-Tucker-McDougal	Smith-McDougal

7a. EXPLANATION/DESCRIPTION OF SUSPECTED VIOLATION. Provide a brief narrative description of the activity giving rise to the referral, explaining what is unusual or irregular about the transaction. Details will be provided later in the form. The purpose of this paragraph is to provide a summary description of the overall transaction. (List applicable account numbers.)

Between February 1984 and July 1987, James B. McDougal, Susan H. McDougal, Lisa Knepaugh, Jim Guy Tucker, Stephen A. Smith, Bill Clinton, Hillary Rodham Clinton, and other individuals who are as yet unidentified, were principals in at least one, and possibly more, of the following companies and/or business interests, each of which maintained a checking account at Madison Guaranty Savings & Loan ("MGSL"):

Madison Marketing	Designers Construction
McDougal & Associates	Madison Financial Corporation
Flowerwood Farms, Inc.	Whitewater Development Corp., Inc.
Pembrook Manor, Inc.	Rolling Manor, Inc.
Great Southern Land Co.	Tucker-Smith-McDougal
Smith-Tucker-McDougal	Smith-McDougal

MGSL checking account histories from September 1984 through May 1985 were reviewed and analyzed for each of these entities (hereafter referred to as the "the combined companies"). The patterns that evolved from this review go back to February 1984, possibly earlier, and occur as late as July 1987.

During this time frame, some or all of the principals of the aforementioned companies allegedly allowed, or participated in, numerous questionable cash flow and "loan" transactions between the combined companies, and other financial institutions. The transactions reviewed and discussed herein will allege excessive overdrafts resulting in unauthorized loans, check kiting, possible forgery (or at the very least, extensive use of unauthorized signatures), potential misappropriation of funds, possible illicit campaign contributions, diversion of loan proceeds, and potential bank fraud; each of these actions, compounded by the extended time frame during which they occurred, lends causation to the probability that some or all of the McDougal's business associates and partners, the collective principals of these combined companies, had knowledge of these activities. The extensive nature of these activities could allegedly constitute ongoing criminal and regulatory violations which lasted for a period of three or more years, and could have ultimately contributed to the failure of the Association.

Although some of these companies, such as Madison Marketing, Madison Financial Corporation, and Flowerwood Farms appeared to be viable and active entities, the others appeared to be little more than shell companies with limited assets, whose checking accounts went through sporadic flurries of activity, "money in/money out", then reverted back to minimal balances with very limited activity. The account histories indicate that the collective checking accounts for these entities incurred very limited, if any, monthly service charges, despite their below minimum balances, and limited overdraft charges regardless of the excessive number of overdrafts in several of the accounts.

An analysis of the aggregate checking accounts for these entities between December 1984 and May 1985 reflects a minimum of 95 check transactions occurring by and between the combined companies and/or outside financial institutions, totalling $1,019,122. There were a minimum of 45 deposit transactions by and between the combined companies, affiliated persons and/or financial institutions which totalled $1,079,142. The resulting minimum number of "money in/money out" transactions for these combined, predominantly shell, companies was $2,098,264 over a six-month period of time. To produce all checks from each account, even for a six month period of time, would have been cost prohibitive as well as labor intensive; therefore, only randomly selected checks and deposits were produced from file for the 12/84 - 5/85 target time frame.

The combined companies "lent" one another in excess of $190,000 during the time frame of December 1984 through May 1985. There were 31 checks written, designated as "loans" by and between the entities, that totalled $192,886; however, there is no indication of any form of repayment between the entities. This premise lends support to the suspicion that the McDougal's were utilizing these shell companies as a personal "cash cow" from which to generate funds for their own use, and to the further benefit of some

or all of their business partners, including loan payments to outside financial institutions on behalf of the various partnerships. The McDougals' allegedly further used these shell companies to filter funds from MCSL through Madison Financial Corporation and it's subsidiaries for their own benefit.

From December 1984 through May 1985, the personal checking account of James and Susan McDougal (account # 424) was frequently overdrawn, with overdraft amounts of up to $30,000, lasting for two and three weeks at a time. During this time frame, the combined companies wrote at least 10 checks to James or Susan McDougal, totalling $53,170, calling the funds "loans". The minimum number of collective deposits from various sources shown going into the McDougal's account during the same time frame is in excess of $690,000, with checks going out of the account totalling over $622,000.

Examples of James McDougal's misuse of position are clearly indicated in the number of checks which force paid through the McDougal's joint checking account in the target time frame. The significant amounts, frequency and time span of the overdrafts are being alleged as unauthorized loans for the purposes of this referral. Substantiation of these activities is outlined in the following examples:

- On 1/28/85, check # 577 for $13,181.07 was written from the McDougal's account to Worthen Bank for a loan payment. The signature on the check reads "James B. McDougal", but bears no resemblance to his actual signature. The day the check was written, there were insufficient funds in the account, at which juncture a $14,000 "personal loan" was written from Flowerwood Farms (check # 179) to Jim McDougal. (Susan McDougal's signature on the Flowerwood Farms check had also been forged). Despite the $14,000 loan, the check to Worthen Bank was force paid, overdrawing the McDougal's account by $<4,116.97>, where the balance remained until a deposit of $5,127.04 arrived from an unknown source.

- On 2/7/85, Susan McDougal sent check # 589 for $3,154.28 to the IRS; the day the check was written the account was overdrawn by $<3,282.00>, and when the check was force paid, the balance dipped to $<8,777,06>. The initial overdraft of $<3,282.00> was caused by the force payment of the previously mentioned check to Worthen Bank.

- On 4/4/85, Susan McDougal wrote check # 688 for $3,000 to the Bill Clinton Campaign Fund; the check was force paid on 5/3/85 when the account was already overdrawn $<7,897.73>, increasing the negative balance to $<10,897.73>. The same day, Flowerwood Farms wrote a $3,000 check to Madison Guaranty, which was apparently cashed; given the identical dollar amounts, the probability exists that these funds were also contributed to Clinton's campaign, which, if active solicitations for contributions were occurring, could have provided the impetus for his business associates to write checks totalling $6,000 to his campaign fund, one of which put the McDougal's own account in a $<10,000> negative balance.

- On 4/19/85, check # 699 for $55,000 was written on the McDougal's account to Flowerwood Farms; this was done to cover Flowerwood's existing overdraft of $<50,994.18> which occurred when an $86,612.68 check to Madison Guaranty was force paid. The $86,612.68 check (#196) was a loan payment on McDougal related loan #1591. The date that the check for $55,000 was written, the McDougal's account balance was $19,429, and was subsequently overdrawn by $<28,077.82> when the check was force paid, documenting just one of many instances of check "kiting." The overdraft status on the McDougal's account was remedied by a $29,209.30 check from Execucar, Inc. (allegedly the "car leasing department" of Madison Financial Corporation), which was noted as a "refund on black 280 SL" Mercedes which had been purchased by the McDougal's on 4/18/85. A similar "refund" situation occurred with a $37,149.30 Madison counter check, written to Jim McDougal for an "85 380 SL Mercedes", signed by Henry (or Harry) signature almost illegible) Hamilton. Jim McDougal had previously written check # 691 for $37,149.30 to Execucar Inc.on 4/9/85. In one instance, the funds were rebated to the McDougal's when their account balance was in an excessive state of overdraft.

- On 5/24/85, check # 760 for $83,233.29 was issued from the McDougal's account to Union National Bank, allegedly for a loan payment. The date the check was written, the McDougal's account contained a balance of $963.19; Jim McDougal procured loan #2764 for $85,000 from MGSL, depositing the funds into their joint account to cover the check to Union National Bank. However, despite the deposited loan proceeds, the $83,233.29 check was force paid, putting the McDougal's account balance at $<4,096.03>

It should also be pointed out that the McDougal's clearly diverted funds from their MGSL home purchase and improvement loan of $381,502, funded in 2/85, for other purposes. Over $100,000 was diverted for the purpose of bringing principal and interest payments current on five separate MGSL loans, as evidenced by McDougal check # 611 for $95,362.62, and check # 612 for $5,659.17. It should be further noted that check #616 for $4,500 was written from the loan proceeds to Lorene McDougal, a relative, for undisclosed purposes.

In addition to McDougal's blatant misuse of position in allowing his personal account to exist in such an overdrawn state, he allowed the same circumstances to occur with the combined shell companies as well. Between 12/84 and 9/85, there were 16 overdraft situations within the accounts of the combined companies. The majority of these overdrafts were cured by deposits from one company to another, sometimes by "kiting" funds between accounts in which insufficient balances existed. This allegedly happened on at least two occasions with Whitewater Development, who evidently had another account (possibly at Bank of Kingston, now Madison Bank & Trust), into which funds were deposited from the MGSL Whitewater account, leaving it in an overdraft status.

During the target time frame, Whitewater Development wrote a minimum of 10 checks, totalling $70,639.41. Of these 10 checks, five checks totalling $60,625 were written on insufficient funds. The ensuing overdrafts were covered by funds from the other combined companies, some of which were provided by bank loans. Some of the Whitewater checks with more significant dollar amounts, such as check # 118 for $7,500, and # 128 for $5,071.23, were payable to The Bank of Cherry Valley for principal and interest on two separate loans, and were written on insufficient funds. Check # 118 was force paid, overdrawing Whitewater's account by $<7,492.04>, where the balance remained until check # 152 from Tucker-Smith-McDougal for $7,500 was deposited into Whitewater's account. The circumstances surrounding Whitewater check # 128 were similar, only the deposit came from the combined accounts of Rolling Manor, Tucker-Smith-McDougal, Flowerwood Farms and Pentbrook Manor. Maurice Smith, principal and/or loan officer of the Bank of Cherry Valley, is allegedly a long time associate of Jim McDougal. Smith was also a frequent caller to Jim McDougal, according to the MGSL phone message logs.

Each instance in which Whitewater's actions resulted in an overdraft, no service charge or fees were assessed, with the exception of two in 1985, both of which were refunded. The two largest checks written by Whitewater during this time frame, check #137 for $25,000, payable to Ozarks Realty Co., and check # 138 for $30,000, payable to James McDougal (alleged "loan repayment" - although the records show no indication of any loan from McDougal to Whitewater) were both forced paid as there were insufficient funds in the account to cover either check. When the $25,000 check paid, placing the balance at $<24,470.90>, the overdraft was covered by a check from Flowerwood Farms for $24,455.90 (the amount of the overdraft, less the $15 service charge which was later refunded). The Flowerwood funds came from the proceeds of a $135,000 cashiers check drawn on Stephens Security Bank, Stephens, Arkansas. The $30,000 check written from Whitewater to James McDougal was written when Whitewater had a balance of $270.13. When the check was force paid, the balance went to $<29,744.87>, where it remained for two weeks until a $30,000 check from Madison Financial Corporation (subsidiary of MGSL) was deposited into Whitewater's account. There was no explanation given as to why Madison Financial would have given (or even "loaned") Whitewater Development $30,000.

At this juncture, it should be noted that shortly after the target time frame, in October 1985, the MGSL Board of Directors minutes reflect that Madison Financial Corporation was overdrawn by $2.7 million; the Board subsequently voted to call the overdraft "an investment in the service corporation", as up to 6% of the Associations assets could be invested in service corporations, from a regulatory standpoint. It should be further noted that the $30,000 check James McDougal received from Whitewater was endorsed to Earth Movers, Inc., (whose principal is former Senator J. W. Fulbright)

who subsequently endorsed it to Madison Guaranty for the purpose of obtaining a cashier's check (drawn from MCSL account #7001312, transaction #7801). The cashier's check is currently unavailable, so the final destination of the funds is yet undetermined.

In addition, it should be pointed out that the records of the former MCSL Chief Financial Officer, Greg Young, reflect a $30,000 "reserve" payment anticipated from Whitewater Development in 10/85 for an "engineering survey"; this information appears on a flow chart relating to Maple Creek Farms, a land investment/subdivision development of Madison Financial Corporation, and a second tier subsidiary of Madison Guaranty Savings & Loan. In addition, every month during the target time frame, Susan McDougal deposited a check for $285.13 from Logan Charter Service into the Whitewater account; these funds were diverted from the Bank of Kingston to whom they were all payable, and endorsed by Susan McDougal to Whitewater's MCSL checking account in an apparent effort to keep a minimal balance in the account.

Forgery is also alleged to be a possible factor in several of the checks written on the Whitewater account. According to the MCSL signature card for Whitewater Development Corporation, Inc., the only signatory on the account is Susan McDougal; however, the signature on the card allegedly bears little resemblance to Susan McDougal's actual signature. It is interesting to note that the $25,000 check written on the Whitewater account to Ozarks Realty Co., has "James B. McDougal" signed to it even though he is not a signatory on the account. The signature on the check was allegedly signed by someone else, whose handwriting bears a striking resemblance to that of Lisa Anspaugh, a McDougal business associate in a number of other enterprises. In fact, Ms. Anspaugh allegedly forged or signed both James and Susan McDougal's signature to checks drawn on all of the combined companies accounts on numerous occasions during the time frame in question. Although at least one of the checks written by Whitewater to the Bank of Cherry Valley was actually signed by Jim McDougal, most of them were signed "James B. McDougal", allegedly by Susan McDougal or Lisa Anspaugh. If these were not actual instances of forgery, per se, then there were certainly numerous cases of unauthorized signatures on the accounts. That being the case, the McDougal's apparently set few parameters for "signature authority" on their personal and corporate accounts, with multiple checks showing no less than three different signatures for "James B McDougal" and no less than four different signatures for "Susan B McDougal".

An overview of the Whitewater account history supports possible criminal action on the part of Susan McDougal, Lisa Anspaugh, and at least one other individual, for alleged forgery, or unauthorized signatures in the name of James B. McDougal (and in the case of Lisa Anspaugh, the name of Susan McDougal) on numerous checks. In addition, the fact that James McDougal was not a signatory on the account, but signed checks regardless of that fact, shows his reckless disregard for regulatory requirements and banking laws. McDougal's documented willingness to allow the frequent overdraft status on the Whitewater account, ensuring that loans payments were made and corporate obligations met, served his own benefit as well as that of some or all of his business partners. Although circumstances point to the probability that some or all of his business partners were aware of the activity taking place within the Whitewater partnership and corporate checking accounts, there is insufficient evidence at this time to prove that they had knowledge. Consequently, these individuals will appear on the list of witnesses contained at the end of this referral.

Similar instances were allowed to occur with the account of Tucker-Smith-McDougal, whose principals were James McDougal, Jim Guy Tucker and Stephen A. Smith. The following examples are noted:

- On 1/22/85, check #161 for $3,894.66 was written to First Commercial Bank for "interest" on a commercial loan. James McDougal's signature was allegedly signed or forged by Susan McDougal, who was technically the only signatory on the MCSL signature card. The date the check was written, the account did not contain sufficient funds, and subsequently went into an overdraft status of $<2,953.00> when the check force paid. The overdraft was cleared with a check from Flowerwood Farms (#176) for $3,500 on 1/28/85.

- On 3/13/85, check #166 for $4,000 was written to Citizen's Bank for "release deed Madison County". James McDougal's signature was yet again allegedly signed by his wife, Susan. The date the check was written, the Tucker-Smith-McDougal account did not contain sufficient funds, and the account went into overdraft status of $<3,027.69> when the check was force paid on 3/19/85. The account maintained an overdraft status until 4/9/85, when a deposit of $9,189.69 was received from Flowerwood Farms (check # 193). The funds from Flowerwood Farms were exactly enough to cover the existing overdraft, plus cover Tucker-Smith-McDougal check # 169 for $5,664.73 which had been written to Citizen's Bank of Marshall, Arkansas, on 4/2/85 before there were sufficient funds available to honor the check.

- On 3/11/85, First Mortgage, Inc. wrote check # 5923 for $1,150 to Madison Guaranty Savings and Loan. This check was allegedly endorsed by Susan McDougal for Madison Guaranty, and deposited to the account of Tucker-Smith-McDougal the day before a $2,500 check written to Whitewater cleared the account, leaving a balance of $72.31.

Similar instances involving the Flowerwood Farms account have been previously evidenced through the examples used in conjunction with the McDougal's personal checking account. Additional specific information on activity in each of the combined accounts will be forthcoming in the chronology of events which follows.

The extent of the foregoing activities will substantiate this referral's allegations of check kiting between the related entities ("the combined companies"), as well as transactions between McDougal's personal account and the combined companies. This referral will further allege that, due to the extended period of time over which these transactions occurred, these actions were probably known to some or all of the principals of the combined companies. Each of these principals appear on the witness list, as there is insufficient evidence at this time, as previously stated, to prove that they had knowledge of these activities. This range of events further serves to support the allegations of forgery, misuse of position, diversion of funds, and probable bank fraud as well as conspiracy to defraud the institution on the part of James McDougal, Susan McDougal and Lisa Knepaugh.

75. GIVE A CHRONOLOGICAL AND COMPLETE ACCOUNT OF THE SUSPECTED VIOLATION: (Use continuation sheet, if necessary.)

• Relate key events to documents and attach copies of those documents

For purposes of clarification, the following chronology of events is broken down by entity account, and in the case of James & Susan McDougal, by individuals.

James B. and Susan H. McDougal, MG&L Account # 424

1/28/85 Check # 577 for $13,181.07 was issued to Worthen Bank for principal and interest payment on a loan. James McDougal's signature appears to have been forged, or signed by an unauthorized party on his behalf. There were insufficient funds in the account that date check # 577 was written; however, the McDougal's received a "personal loan" of $14,000 from Flowerwood Farms, Inc. (check # 179 - showing an allegedly forged "Susan McDougal" signature) on 1/29/85. Despite the $14,000 "loan"/deposit, the check to Worthen Bank was force paid on 2/6/85, leaving the account overdrawn $<4,116.97>, where it remained until 2/7/85 when a deposit of $5,227.04 was received from an unknown source.

2/5/85 Check # 589 for $3,154.28 was issued to the IRS. The check was allegedly signed by Susan McDougal. On the date it was written, the account was overdrawn by $<3,282.00>. When the check cleared on 2/19/85, the account's overdraft status increased to $<8,777.05>. As previously noted, the initial overdraft status on the account was caused when check # 577 for $13,181.07 to Worthen Bank was force paid.

2/19/85 Check # 611 for $95,562.62 was issued too Madison Guaranty Savings & Loan, for principal and interest payments on five McDougal related loans. This check cleared from loan proceeds of $351,502.80 deposited to McDougal's account on 2/22/85. The proceeds were designated "purchase and renovation of home" for the McDougals; however, over $100,000 of the proceeds were ultimately diverted for the purpose of bringing other debt current.

2/19/85 Check # 612 for $5,659.17 was issued to Madison Guaranty Savings & Loan for interest on a McDougal related $85,000 unsecured commercial loan. Again, the check cleared through the funds provided by proceeds from the home loan.

2/20/85 A deposit for $1,000 was credited to the McDougal's account; the deposit was check # 181 from Flowerwood Farms, allegedly signed by Susan McDougal, and deposited to their account when it was overdrawn $<11,687.09>.

2/21/85 Check # 615 for $178,301.02 was issued to Madison Bank & Trust (formerly the Bank of Kingston) to payoff "#4 Bettswood Mortgage at Pulaski Bank". #4 Bettswood is the address of the McDougal's new home. It is recommended that the Pulaski Bank records be reviewed to verify this information.

2/22/85 A deposit for $10,000 was credited to the McDougal's account; the funds coming from Madison Marketing check # 238 payable to Susan McDougal, with no specific stated purpose. Prior to this deposit, the McDougal's account was overdrawn $<8,612.05>.

2/22/85 Loan proceeds, in the form of Cashier's Check # 2218 for $351,502, were deposited into the McDougal's account. As noted, this loan was for the stated purpose of purchasing and renovating a home.

2/26/85 Check # 616 for $4,500 was issued to Lorene McDougal, one of Jim McDougal's relatives. This check did not indicate a specific purpose, and cleared through the funds provided by the loan proceeds. As the McDougal's were contributing to the Clinton Campaign fund during this time frame, it is recommended that a further investigation be undertaken to determine the possibility that these funds were provided to Lorene McDougal for the possible purpose of making additional campaign contributions on behalf of the McDougals or Madison Guaranty.

2/27/85 Check # 637 for $450 was issued to Lorene McDougal. Again, there was no designated purpose on the check, which raises the previously unanswered question. Both checks to Lorene McDougal were signed by Susan McDougal.

Check # 157 for $4,500 was issued to Madison Bank & Trust for interest on loan # 3376.72. This check also cleared from the home loan proceeds, putting the dollar amount of funds diverted for other debt to over $100,000.

NOTE: It appears that the McDougal's each kept their own set of checks for their account #424, and would apparently write checks from which ever pad was available at the time. The numbers on the checks frequently range all over the spectrum in a non-sequential order.

3/2/85 Check # 158 for $8,250 was issued to Robert T. Wilson for "payment on note". Wilson's specific role in this transaction has not been defined, nor has the purpose of the "note" (loan) in question. Jim McDougal allegedly signed this check, which appears to be a fairly rare occurrence.

3/10/85 Check # 178 for $13,248 was issued to Haynes Auto, with no specifically stated purpose, but would appear to be for the purchase of a car. The check is signed "Susan McDougal", but does not appear to be Susan McDougal's alleged signature. This check cleared from the home loan proceeds. The same day check # 179 for $1,738 was issued to Haynes Auto,

again with no specifically stated purpose, and check # 180 for $13,250 was written to a Mr. Charles Bronson, for no specifically stated purpose. All three of these checks, totalling $28,236, cleared from the proceeds of the McDougal's home loan.

3/10/85 Check # 181 for $4,852 was issued to ITT Kruse Int., the memo field shows several loan numbers. It is recommended that records be subpoenaed to determine the nature of, and participants in, this loan.

3/19/85 Madison Guaranty Savings issued check # 2104 for $30,750 to James B. McDougal for "reimbursement for lease auto purchased for Leasing Department". It is recommended that further investigation be conducted to determine if this was reimbursement for the $14,980 in checks written to Haynes Auto on 3/10, and possibly the $13,250 check also written on 3/19, to Charles Bronson. If this is the case, the checks written on 3/10 totalled $28,236, indicating that James McDougal was reimbursed for $2,514 that he did not actually spend.

3/29/85 Check # 676 for $11,000 was issued to Quapaw Title Company, with no stated purpose. This transaction would seem to indicate the possibility of a formal real estate sale or closing of some type; possibly related to the purchase of the McDougal's home, or related in some manner to the $25,000 transaction between Whitewater Development and Ozarks Realty Company. It is recommended that the Quapaw Title Company and Ozarks Realty Company records be reviewed to assess the purpose of the $11,000 check from the McDougals, and it's potential relationship to Whitewater and Ozarks Realty, if any.

4/4/85 Check # 688 for $3,000 was issued to the Bill Clinton Campaign Fund, and allegedly signed by Susan McDougal. The account balance on the date the check was written stood at $<7,897.73>; when the check cleared on 5/3, the overdraft status increased to $<10,897.73>. The account balance remained at this level until 5/9 when $5,281.21 was deposited from an unidentified source.

4/9/85 Check # 691 for $37,149.30 was issued to Execucar, Inc., allegedly a subsidiary of Madison Financial Corporation. The check did not state a specific purpose. When the check was written, the account had a balance of $34,538.78; the check cleared on 4/12 overdrawing the account by $<10,075.00>. Funds totalling the exact same amount were deposited into the McDougal's account on 4/22; the source being a Madison Guaranty Savings & Loan counter check for $37,149.30, allegedly signed by either Barry or Henry Hamilton, with the notation "85 MB 380 AL". It is conceivable that McDougal purchased the car, and then sold it for the same amount two weeks later. However, when considered with the fact that a similar situation occurred with McDougal and Execucar 9 days later on 4/18, the sale/purchase theory becomes increasingly implausible.

4/17/85 A deposit of $33,000 was credited to the McDougal's account; the source remains unidentified at this time, but research continues.

4/18/85 Check # 697 for $29,209.30 was issued to Execucar, Inc. for a black Mercedes. The same amount was refunded to the McDougal's account by Execucar on 5/1/85 when their account was overdrawn by $<28,812.96>. By this point the McDougal's have evidently purchased, and either returned or sold, two expensive cars in a 10 day period of time. It is recommended that these transactions be further investigated through the records of Execucar, Inc. to determine that nature of this activity.

4/19/85 Check # 699 for $55,000 was issued to Flowerwood Farms; this was a "loan" to cover Flowerwood's existing overdraft of $<50,994.17>, which occurred as a result of an $86,612.68 payment to Madison Guaranty Savings & Loan on

a McDougal related loan. At the time the $55,000 check/"loan" to Flowerwood was written, the McDougal's had $19,429.30 in their account. When the check was force paid on 4/23, the McDougal's account was overdrawn by $<38,077.82>

5/1/85 Check # 723 for $1,207.30 was issued to Madison Guaranty for the April and March payments on McDougal related loan # 1064. The account was overdrawn $<7,897.73> when the check force paid on 5/3/85. The end result of this transaction appears to be the McDougal's overdrawing their account, resulting in an unauthorized "loan" from the Association, in order to pay the Association for their April and March loan payments. There appears to be little, if any, logic to these circumstances.

5/1/85 Check # 704 for $50 was issued to the Democratic Party of Arkansas, for the purchase of "2 Jefferson Jackson Day dinner tickets". The account balance was $<5,826.36> when the check force paid.

5/15/85 Check # 748 for $20,000 was issued to Madison Guaranty for the purchase of Cashier's Check # 2704. The remitter on the Cashier's Check was Harth Mover's, Inc., whose principal is J.W. Fulbright, former Senator from Arkansas. Fulbright endorsed the check "for deposit only to Riggs National Bank" on 5/18. On 5/20, $20,000 was deposited into McDougal's account which was overdrawn $<17,682.20> at the time. The source of the deposit is undetermined at this time. It is recommended that Riggs National Bank records be reviewed to determine the possibility that these funds traveled from Fulbright back to McDougal. If so, this transaction is a likely candidate for possible check kiting.

5/16/85 A deposit of $8,370 was credited to McDougal's account, which was overdrawn $<26,052.20> at the time. The funds came from Flowerwood Farms check # 204 for $190, Pembrook Manor check # 128 for $5,300, Great Southern Land Company check # 126 for $180, Rolling Manor check # 212 for $2,400 and McDougal & Associates check # 107 for $300. Each of the checks was designated as a "loan".

5/24/85 Check # 760 for $83,233.29 was issued to Union National Bank. When the check was written, the account contained $963.29. McDougal borrowed $85,000 from MCSL (loan # 2764), and the loan proceeds were deposited into their account to cover the $83,233.29 check. However, when the check cleared on 5/31, it was forced paid, leaving the account with an overdraft balance of $<4,096.03>.

Whitewater Development Corporation, Inc., Account # 2301515
Principals: James and Susan McDougal
Bill and Hillary Rodham Clinton

12/7/84 The Whitewater account was overdrawn by approximately $<6,000>, when a deposit for $9,310 brought the balance up to $3,423.65. The deposit was made up of funds from the accounts of the combined companies: Tucker-Smith-McDougal check # 199 for $1,600, Rolling Manor check # 198 for $330 and Pembrook Manor check #130 for $7,100. Each check was designated as a "loan" to Whitewater, and each check was allegedly signed by either Susan McDougal, or Lisa Anspaugh signing as Susan McDougal. Once the deposit was credited, Whitewater issued check # 127 for $3,275.18 to the Bank of Cherry Valley, taking the account balance down to $147.47.

1/4/85 Check # 128 for $5,071.23 was issued to the Bank of Cherry Valley. The check was signed "James B. McDougal" (who had no signature authority on the account) allegedly by Susan McDougal, based on the handwriting. This check cleared the Whitewater account on 1/11 - the day after a deposit for $4,660 was made to Whitewater by the combined companies accounts.

1/10/85 Whitewater received a deposit for $4,660 from the combined company accounts of Rolling Manor, Tucker Smith McDougal, Flowerwood Farms and Pembrook Manor, bringing the account balance to $5,095.27.

1/22/85 Check # 129 for $1,000 was issued to Whitewater Development Corporation, with the notation "Acct 317.5". This check cleared on 1/28; the same day that Flowerwood Farms issued check # 177 for $1,000 to Whitewater, bringing the account balance up to $1,446.07. Without the benefit of the deposit from Flowerwood, the check written by Whitewater to the Bank of Cherry Valley would have been insufficient.

2/13/85 Check # 132 for $3,000 was issued to Chris Wade (an appraiser, according to MGSL Board Minutes), with no specific stated purpose. The check was signed "James B. McDougal", allegedly by Susan McDougal. This check cleared on 3/13, when the Whitewater account was already overdrawn $<1,891.03>, increasing the overdraft to $<4,891.03>. On the same date, there was a deposit made to the Whitewater account from the combined companies accounts, curing the overdraft.

2/18/85 Check # 133 for $1,625 was issued to Charles E. James "for accounting" services. The check was signed "Susan McDougal", allegedly by someone other than Susan McDougal. This check cleared on 2/21/85, putting the account into overdraft status by $<1,192.06>. The account effectively stayed overdrawn until 3/13, when three deposits (two from the combined companies and one from an undetermined source) totalling $8,800 were credited. The deposits were for $3,300, from the combined accounts, $2,500 from Tucker Smith McDougal, and $3,000 from an unidentified source. Given the proximity of this deposit to the $3,000 check written to Chris Wade, it is recommended that further research be conducted to determine the possibility of Wade "refunding" the $3,000 back to Whitewater, which could account for the "mystery deposit."

2/21/85 Check # 134 for $1,000 was issued to Whitewater Development Corporation with the notation "Account 317.5". The date the check was written the account balance was $<1,192.06>, and when the check cleared on 2/28, the overdraft status increased to $<1,906.93>. Evidence points to the probability that the MGSL Whitewater account was allegedly "swapping", or kiting, checks with a sister account at another bank, in order to maintain a certain account balance.

3/7/85 Check # 136 for $650 was issued to Charles James, again for "accounting" services. This check cleared the account, taking the balance to $258.97 on 3/22.

3/22/85 Check # 137 for $25,000 was issued to Ozarks Realty Company; the purpose was not stated on the check. This check was signed "James B. McDougal, allegedly by Lisa Anspaugh, based on the handwriting. The date the check was written, Whitewater's account reflected a balance of $258.97; when the check force paid on 4/1, the account was overdrawn by $<24,470.90>, which included a $15 overdraft charge that was later rebated. The account stayed overdrawn until 4/9 when a $24,455.90 deposit was received from Flowerwood Farms (check # 194). This deposit amount was exactly the amount of the overdraft, less the $15 overdraft charge. Flowerwood Farms provided the funds from a $135,000 cashiers check drawn on Stephens Security Bank of Stephens, Arkansas, which had previously been deposited to it's account.

NOTE: According to various Oklahoma, Texas and New York newspaper reports from March 1992, this could have been the time frame in which Whitewater was conducting transactions regarding the house that was allegedly purchased and subsequently sold by Ms. Clinton. It is recommended that the Whitewater and Ozarks Realty records be reviewed to determine the possibility of any existing relationship between these two transactions, and the nature of any such relationship, if found.

4/9/85 A deposit of $24,455.90 was credited to Whitewater's account. As previously noted, the funds came from Flowerwood Farms check # 194.

4/19/85 Check # 138 for $30,000 was issued to James B. McDougal with the notation "loan repayment". When the check was written, the account balance was $270.13; when the check force paid, the account was \overdrawn by $<29,744.87>. This check was signed "Susan McDougal", allegedly by Lisa Anspaugh. James McDougal endorsed this $30,000 check to Earth\Movers Inc. (J. W. Fulbright), who in turn endorsed it to Madison Guaranty for the purchase of a Cashier's Check, drawn from MGSL account # 7001312, transaction # 7801. Research to locate the film of the Cashier's Check is continuing.

4/29/85 Check # 139 for $17 was issued to the Arkansas Director Finance Administration for the 1985 corporate franchise tax. The check was signed "Susan McDougal", allegedly by Lisa Anspaugh.

4/30/85 A deposit for $30,000 was credited to Whitewater's account. The funds were provided by Madison Financial Corporation, but no purpose was stated on the check. This deposit brought the Whitewater balance from $<29,744.87> to $255.13. It is recommended that the records of Madison Financial Corporation be reviewed to determine the specific business purpose of the funds remitted to Whitewater Development. The check from Madison Financial was signed by MGSL Chief Financial Officer, Greg Young, who was also responsible for creating the previously referenced "Reserves" spreadsheet (see referral summary) in which a 10/85 $30,000 "engineering survey" fee was to be charged to (or reserved from) Whitewater Development.

Tucker-Smith-McDougal, MGSL Account # 2301353
Principals: James B. McDougal
Jim Guy Tucker
Stephen A. Smith

1/22/85 Check # 161 for $3,894.66 was issued to First Commercial Bank for interest on a loan. The check was signed "James B. McDougal", allegedly by Susan McDougal. James McDougal does not appear on the signature card as a signatory on this account. The date the check was written, the account balance did not contain sufficient funds; when the check cleared on 1/28, the account was overdrawn $<2,953.00>. The same day, Flowerwood Farms made a $3,500 "loan" (check # 176) to Tucker Smith McDougal, allegedly for the purpose of covering the overdraft.

2/7/85 Check # 162 for $3,000 was issued to James B. McDougal as a "personal loan". The check was allegedly written and signed by Susan McDougal. This check was deposited to McDougal's account along with a check from Madison Financial Corporation for $7,127.04 noted as "salary" on the deposit slip.

2/14/85 Check # 163 for $300 was issued to James B. McDougal for "petty cash." This check was also allegedly written and signed by Susan McDougal.

2/17/85 Check # 164 for $1,600 was issued to Charles K. James for "accounting" services. The check was signed "Susan McDougal" allegedly by someone other than Ms. McDougal, and appears to be the signature showing on the actual MGSL signature card. As previously noted, the signature on the MGSL account signature card is not believed to be that of Susan McDougal.

3/11/85 A deposit of $1,150 was credited to the Tucker Smith McDougal account: according to the deposit slip, the funds were related to "Robert Armstrong". However, the check was actually payable to Madisoo Guaranty Savings, and endorsed on behalf of Madison Guaranty, allegedly by Susan McDougal, and subsequently deposited to the Tucker Smith McDougal account. This deposit was made one day prior to the clearing of Tucker Smith McDougal check # 165 for $2,500 [illegible]

3/12/85 Check # 165 for $2,500 was issued to Whitewater Development. This check, along with checks from the other combined companies accounts totalling $3,300, were deposited to Whitewater on 3/12, curing an overdraft of $<4,891.03>. The overdraft status in the Whitewater account was caused by the force pay of check # 132 for $3,000 issued to Chris Wade.

3/13/85 Check # 166 for $4,000 was issued to Citizens Bank for "release deed in Madison County". This check was signed "James B. McDougal", allegedly by Susan McDougal. The date the check was written, there were insufficient funds in the Tucker Smith McDougal account; the check cleared on 3/19, overdrawing the account by $<3,927.60>. This overdraft situation existed for three weeks, until 4/9, at which time a deposit of $9,289.69 was made into the account by check # 193 from Flowerwood Farms. The difference in the deposit amount and the new account balance, $5,664.73, was exactly the amount necessary to cover Tucker Smith McDougal check # 169 for $5,664.73 to Citizen's Bank, written on 4/1 when the account was still overdrawn.

4/1/85 Check # 169 for $5,664.73 was issued to Citizen's Bank of Marshall, Arkansas for payment on "notes 40071190 and 00031484". The status of the account at this time was sufficiently discussed in the foregoing Tucker Smith McDougal transaction dated 3/13/85.

Flowerwood Farms, Inc. MGSL Account # 2301361
Principals: Undetermined at this time

12/11/84 Check # 170 for $8,000 was issued to James B. McDougal. At the time this check was issued, the McDougal's account was overdrawn by $<4,095.39>. This deposit from Flowerwood brought the balance up to $3,904.61

1/10/85 Check # 172 for $1,430 was issued to Whitewater Development as part of a $4,660 deposit. The funds from this deposit were allegedly used to cover Whitewater's check # 128 for $5,071.23 to the Bank of Cherry Valley.

1/22/85 Check # 173 for $6,202.26 was issued to First Commercial Bank for "interest on note # 00001618". The check was signed "James P. McDougal" allegedly by Susan McDougal. The date the check was written, the account contained a balance of $866.74. However, on 1/23 a $28,500 deposit was credited to the account, received from Bill Henley (brother-in-law of Susan McDougal) allegedly for "20 acres in Pulaski County". The check for $6,202.26 cleared the Flowerwood account on 1/25.

1/24/85 Check # 175 for $3,500 was issued to James B. McDougal. This check was part of a $4,675.41 deposit to McDougal's account.

1/28/85 Check # 176 for $3,500 was issued to Tucker Smith McDougal for the alleged purpose of covering the existing Tucker Smith McDougal overdraft. This check was allegedly signed by Susan McDougal.

1/28/85 Check # 177 for $1,000 was issued to Whitewater Development as a "loan" to cover Whitewater's existing overdraft. This check was allegedly signed by Susan McDougal.

1/29/85 Check # 179 for $14,000 was issued to James P. McDougal as a "personal loan". This check was signed "Susan McDougal", allegedly by someone other than Susan McDougal. The loan was allegedly intended to cover a $13,181.07 check written on McDougal's account to Worthen Bank; however, the check was force paid, and McDougal's account was overdrawn.

3/12/85 Check # 183 for $1,500 was issued to Great Southern Land Company, designated as a "loan." The same day, check # 184 for $500 was issued to McDougal & Associates, also designated as a "loan. This check was signed "Susan McDougal", allegedly by Lisa Anspaugh.

4/1/85 Check # 188 for $11,763.11 was issued to International Paper Realty Corporation as a principal and interest payment on a note. The check was signed "Susan McDougal", allegedly by someone other than Susan McDougal. There was a balance of $1,550.91 in the account the date the check was written; however, a $135,000 deposit was received and credited prior to this check clearing.

4/3/85 Check # 189 for $53,053.41 was issued to First Commercial Bank to "pay off commercial loan". Funds for this check were derived from a $135,000 deposit to Flowerwood's account the same day.

4/3/85 A deposit of $135,000 was credited to the Flowerwood account from a Cashiers Check drawn on the Stephens Security Bank of Stephens, Arkansas. Funds from this deposit were remitted from Flowerwood to:

- Madison Guaranty for $3,000, check # 192 (further research into the possibility that this was a campaign contribution has previously been suggested)
- Tucker Smith McDougal for $9,189.69, check # 193, allegedly to cover an existing overdraft.
- Whitewater Development for $24,455.90, check # 194, allegedly to cover the overdraft caused by Whitewater's check for $25,000 to Ozarks Realty.
- First Commercial Bank for $53,053.41, check # 189, allegedly for a McDougal related loan payoff.
- International Paper Realty for $11,763.11, check # 188, for a loan payment
- Madison Guaranty Savings and Loan for $86,612.68, check # 196, allegedly to pay off a McDougal related loan. This check overdrew the account by $<50,994.18>, which was subsequently covered by James B. McDougal's check for $55,000, which overdrew McDougal's account by $<28,077.8>

4/4/85 Check # 192 for $3,000 was issued to Madison Guaranty Saving; there was no specific purpose stated on the check. As previously noted in this referral, it was recommended that further research be conducted into the disposition of these funds to determine the possibility that this was an additional campaign contribution, given the time frame involved.

4/9/85 Check # 193 for $9,189.69 was issued to Tucker Smith McDougal, allegedly for the purpose of covering the existing overdraft in the Tucker Smith McDougal account, as well as covering the yet outstanding Tucker Smith McDougal check # 169 for $5,664.73 to Citizen's Bank.

4/9/895 Check # 194 for $24,455.90 was issued to Whitewater Development, allegedly to cover Whitewater's overdraft, as previously noted. This check was signed "James B. McDougal", allegedly by Lisa Anspaugh.

4/17/85 Check # 196 for $86,612.68 was issued to Madison Guaranty Savings & Loan for "principal and interest" on McDougal related loan # 1591. This check overdrew the Flowerwood account by $<30,994.18> when it was force paid. Funds to allegedly cover this overdraft were provided by check # 699 for $55,000 from James B. McDougal's account. As noted in prior transaction analyses, the $55,000 check from Mcdougal overdrew his account by $<28,077.82>. This transaction provides a blatant example of the check kiting alleged in the summary of the referral.

5/16/85 Check # 204 for $190 was issued to James B. McDougal as a "loan." This check was part of a deposit from the combined accounts totalling $8,370, which went into McDougal's account at a time when it was overdrawn $<26,052.20>

Of the combined companies accounts, Flowerwood Farms, Inc., Whitewater Development Corporation, Inc., and Tucker Smith McDougal, in conjunction with the personal account of James B. and Susan H. McDougal, were the most active and egregious contributors to the alleged overdraft and check kiting activities. Although the other entities, (Rolling Manor, Inc., Pembrook Manor, Inc., Great Southern Land Company, McDougal & Associates, etc.) contributed a significant share of the "combined companies" deposits and "loans" between the various accounts, the specifics regarding their activities have been omitted for the purposes of brevity. Individual transaction information for the "combined companies" accounts during the 12/84 - 5/85 time frame can be found in the attached database report, which outlines the dates, transaction types, check numbers, payee, payor and deposit recipients. This database has been individually sorted by date, dollar amount, payee, payor and deposit recipient in order to facilitate ongoing research and further investigative activities.

• Explain who benefitted, financially or otherwise, from the transaction, how much, and how.

Those who allegedly stood to gain the most benefit from these numerous and questionable inter-account transactions, were the principals of the combined entities; James and Susan McDougal, Lisa Anspaugh (who is a principal in Designer Construction and allegedly Madison Marketing, as well as an alleged business associate of Jim Guy Tucker), Bill and Hillary Rodham Clinton, Jim Guy Tucker, Steve Smith, and any other principals as yet unidentified. The overdrafts and "loan" transactions, or alleged check "swapping" and kiting, between the combined companies accounts ensured that loan payments and other corporate obligations were met, thus clearly benefitting the principals of each entity.

In addition, the McDougal's stood to gain extensive financial benefit by utilizing these various shell companies as a vehicle through which to channel funds from Madison Guaranty, through Madison Financial and it's subsidiaries, into the personal account of James and Susan McDougal.

• Furnish any explanation of the transaction provided by the suspect and indicate to whom and when it was given.

To date, no explanation has been given by any suspect.

• Furnish any explanation of the transaction provided by any other person.

No explanations of these transactions have been provided by anyone other than the investigator at this time.

• Furnish any evidence of coverup by the suspect, or evidence of an attempt to deceive federal or state examiners or others.

This entire series of transactions by and between the combined companies and their accounts is being alleged as an effort by the McDougal's to "smokescreen" the flow of funds from Madison Guaranty and it's subsidiaries, into the various entities owned and operated by the McDougal's and their business associates.

• Indicate where the suspected violation took place (e.g., main office, branch, other).

These violations collectively took place at the Madison Guaranty [illegible] office at 16th and Main in [illegible]

• Recommend any further investigation that might assist law enforcement in fully examining the potential violation.

Individual recommendations have been noted within the transactional analyses throughout the body of the referral. However, it should be reiterated that certain individuals on the witness list should be extensively interviewed with regard to their knowledge of the activities between the combined companies and their accounts.

7c. Indicate whether the suspected violation appears to be an isolated incident or whether it relates to other transactions. (Explain)

No; this violation was not isolated, but rather ongoing over a period of three or more years, possibly making a significant contribution to the failure of the institution.

8. EXCLUSION OF INFORMATION FROM THE REFERRAL:

Has any pertinent information been excluded from this referral as a result of any legal or other restraint?

_____ Yes __X__ No If so, why?

Have the excluded information or documents been segregated for later retrieval?

_____ Yes __X__ No

NOTE: DUE TO THE BULK OF THE EXHIBITS, THEY WILL BE SHIPPED TO THE U.S. ATTORNEY'S OFFICE UNDER SEPARATE COVER.

9. HAS SUSPECTED INDIVIDUAL(S) MADE ANY ADMISSIONS?

_____ Yes __X__ No If so, who?

10. WITNESSES:
List any witnesses who might have information about the suspected violation and describe their position or employment. Indicate if they have been interviewed. (Use continuation sheet, if necessary.)

	NAME	POSITION	ADDRESS (CITY & STATE ONLY)	TELEPHONE NUMBER	INTERVIEWED YES	INTERVIEWED NO
1.	Bill Clinton	Governor/AR and McDougal business associate	Little Rock, Arkansas	Unknown		X
2.	Hillary Rodham Clinton	Counsel/MGSL and McDougal business associate	Little Rock, Arkansas	Unknown		X
3.	Jim Guy Tucker	Lt. Governor/AR and McDougal business associate	Little Rock, Arkansas	Unknown		X
4.	Stephen A. Smith	McDougal business associate	Little Rock, Arkansas	Unknown		X
5.	J. W. Fulbright	McDougal business associate	Little Rock, Arkansas	Unknown		X
6.	Greg Young	Former MGSL Chief Financial Officer	Little Rock, Arkansas	Unknown		X

In addition to the foregoing witnesses, it is also recommended that the following individuals be interviewed with respect to their knowledge:

Kirby Randolph - former receptionist at MGSL, and recipient of all monthly statements on the combined companies accounts in lieu of mailing; also the wife of R. D. Randolph, a McDougal business associate and frequent depositor to various combined companies accounts.

R. D. Randolph - former McDougal business associate; allegedly involved with several of the combined companies.

Bonnie Crocheron - currently employed by MGSL's successor entity, Central Bank and Trust. Formerly involved in administration at the Association; allegedly knowledgeable regarding the institutions Demand Deposit Accounts and their holders.

Charles K. James - accountant for the combined companies, and registered agent for Whitewater Development Corporation.

11. DISCOVERY AND REPORTING:

a. Who discovered the suspected violation and when?

Investigator; in May 1992

b. Has the suspected violation been reported to the Board of Directors?
_____ Yes _____ No Not Applicable

By whom and when? Not Applicable

c. Has the Board of Directors taken action?
_____ Yes _____ No Not Applicable

If so, what and when? Not Applicable

d. Has the suspected violation previously been reported to federal or local law enforcement or to any federal or state supervisory agency?
_____ Yes __X__ No

If Yes, Agency:
Agent:
Address: (City/State)
Telephone Number:

12. LOSS:

a. Amount of Loss known: $ Undetermined at this time
b. Restitution by: Not Applicable
In the amount of: $ Not Applicable
c. Name of Applicable Surety Bond Company:
d. Amount of Bond: $
e. Amount of deductible: $
f. Was claim filed? _____ Yes _____ No
g. Settlement by Surety Company: $
h. Total restitution and settlement to date: $ Not Applicable
i. Net Loss: (After subtracting any amounts paid in the form of restitution or settlement) $
j. Is additional loss suspected? __X__ Yes _____ No
(If yes, explain)

The nature of the transactions identified in this referral could lead to additional losses under further investigation.

k. Has the suspected violation had a material impact on, or otherwise affected, the financial soundness of the institution? If so, please explain.

Yes; the activities identified and alleged within this referral could have contributed to the failure of the institution.

13. OFFER OF ASSISTANCE:

The individuals listed below are/will be authorized to discuss this referral with appropriate law enforcement officials and to assist in locating or explaining any documents pertinent to this referral, provided that contact is first made with:

NAME	TELEPHONE NUMBER
Lee O. Ausen/Department Head/ Criminal Investigations/RCCC	(816) 531-2212
L. Richard Iorio/Field Investigations Officer/RCCC	(816) 531-2212

14. FORM PREPARED BY:
Position:
Agency/Institution:
Telephone Number:
Date:

Laura Jean Lewis
Criminal Investigator
Resolution Trust Corporation
(816) 968-7237
August 31, 1992

15. AUTHORIZATION FOR TRANSMITTAL:

Investigator — Date 8/31/92

Criminal Investigations Department Head — Date 8/31/92

L. Richard Iorio
Field Investigations Officer — Date 9-1-92

736-TCC/kai
Revised 10/08/91
Conan/Lew

U.S. Department of Justice

United States Attorney

Eastern District of Arkansas

Post Office Box 1229

Little Rock, Arkansas 72203

October 16, 1992
(Dictated 10-14-92)

Mr. Don Pettus
Special Agent in Charge
Federal Bureau of Investigation
#2 Financial Center, Suite 200
Little Rock, AR 72211

Re: RTC Referral No. C0004

Dear Mr. Pettus:

This is a followup to my previous meeting with you and my second review of the above referenced referral with supporting documents.

At the time we met, I explained to you my serious reservations about future prosecutions of the individuals involved in the referral. My evaluation of the referral indicates that there is not a prosecutable case capable of being proved beyond a reasonable doubt against any of the witnesses. While participation of some or all of these witnesses certainly suggests poor judgment, possible conflicts of interest or ethical infractions, proving specific intent or knowing criminal conduct would be a prosecutorial burden that could not be carried beyond a reasonable doubt.

The only allegations having any credibility worthy of possible deliberation for investigation exists against Mr. and Mrs. McDougal and Lisa Anspaugh. Even these allegations, combined with Mr. McDougal's previous acquittal, his present mental state along with no prospect of recovering lost monies from the institution have serious negative attributes for a successful prosecution of these insiders.

I am now advised that you have been ordered to do an immediate review to determine if an intestigation is warranted. As part of same, you are required to send a prospective proposal for such investigation by Friday, October 16, 1992. Such an order does not apply to this office.

However, I do believe it might be helpful to reiterate what I have told you previously. Neither I personally nor this office will participate in any phase of such an investigation regarding the above referral prior to November 3, 1992. You may communicate this orally to officials of the FBI or you should feel free to make this part of your report.

While I do not intend to denigrate the work of RTC, I must opine that after such a lapse of time the insistance for urgency in this case appears to suggest an intentional or unintentional attempt to intervene into the political process of the upcoming presidential election. You and I know in investigations of this type, the first steps, such as issuance of grand jury subpoena for records, will lead to media and public inquiries of matters that are subject to absolute privacy. Even media questions about such an investigation in today's modern political climate all too often publicly purports to "legitimize what can't be proven."

For me personally to participate in an investigation that I know will or could easily lead to the above scenario and to the possible denial of rights due to the targets, subjects, witnesses or defendants is inappropriate. I believe it amounts to prosecutorial misconduct and violates the most basic fundamental rule of Department of Justice policy. I cannot be a party to such actions and believe that such would be detrimental to the Department of Justice, FBI, this office and to the President of the United States.

In due time, I will be happy to meet with you to discuss a limited examination and possibility of proving some of the allegations regarding Mr. and Mrs. McDougal and Ms. Anspaugh. In the event I conclude that their case should be declined, which at this point is a distinct possibility, the DOJ can certainly override that decision and commit Department of Justice personnel and resources to both the investigation and prosecution of the case.

For your information, in the event I receive any press inquiry from any source whatsoever I am going to refer them to the supervisory officials in the Department of Justice and/or Resolution Trust Corporation.

Thank you.

Best Regards,

CHARLES A. BANKS
United States Attorney

CAB:bw

cc:

Floyd Mac Dodson
Executive Assistant U.S. Attorney

U.S. Department of Justice

United States Attorney
Eastern District of Arkansas

Post Office Box 1229
Little Rock, Arkansas 72203

EOUSA
RECEIVED
1993 FEB -1 P 3: 35
OFFICE OF LEGAL COUNSEL

January 27, 1993

Ms. Donna Henneman
Office of Legal Counsel
Executive Office for U.S. Attorneys
Main Justice Building
Washington, D.C. 20530

Re: RTC Referral C0004

Dear Ms. Henneman:

This is a follow-up to my letter of October 16, 1992, which I believe was previously sent to you. If not, a copy is enclosed.

RTC officials have again contacted this office following an FOIA request upon them by some member of the Little Rock media.

RTC's contact with us was to determine the position of this office regarding their response to the FOIA request. Specifically, RTC wanted to know if a production of referral documents would affect our investigation.

The purpose of this letter is to clarify any possible confusion.

First, we have no investigation ongoing. Second, we have informed RTC of this and further suggested they should follow the appropriate FOIA law in responding to the request. I believe this RTC inquiry makes it appropriate for me to advise you as to the present status of the above referral.

Our position as related in the enclosed letter of October 16 is self-explanatory. As previously indicated, it seems prudent that a limited preliminary investigation of allegations pertinent to Mr. and Mrs. McDougal and Ms. Anspaugh should be considered. The taking of 302's from these individuals should determine whether there is merit to substantiate further investigation.

I believe this office has a conflict of interest in conducting an investigation or presenting an indictment against these individuals. Previous prosecution of Mr. McDougal and two other defendants resulted in a not guilty verdict. Several allegations suggesting political prosecutions were made during the trial. These were patently false but a second investigation/prosecution could easily give the appearance of inappropriate motivation by this office.

I would appreciate and expect that any decision of investigation, indictment, prosecution or declination be the responsibility of the Department of Justice. I have resigned my position as United States Attorney effective March 1, 1993, and am separating service with the Department of Justice that date. I will be happy to transfer the RTC workpapers or make them available for your review.

Best Regards,

Charles A. Banks

CHARLES A. BANKS
United States Attorney

CB/bw

U.S. Department of Justice

United States Attorney

Eastern District of Arkansas

Post Office Box 1229
Little Rock, Arkansas 72203

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1992 OCT 20 A 10 56
OFFICE OF LEGAL COUNSEL

October 16, 1992

Donna Henneman
EOUSA
Main Building, Room 1629
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: RTC Referral No. C0004

Dear Ms. Henneman:

Enclosed is a letter which I hope is self-explanatory. It is a follow up to our previously submitted summary of the above referral.

Best Regards,

Charles Banks

CHARLES A. BANKS
United States Attorney

CAB:bw

U.S. Department of Justice

United States Attorney

Eastern District of Arkansas

Post Office Box 1229

Little Rock, Arkansas 72203

October 16, 1992
(Dictated 10-14-92)

Mr. Don Pettus
Special Agent in Charge
Federal Bureau of Investigation
#2 Financial Center, Suite 200
Little Rock, AR 72211

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In due time, I will be happy to meet with you to discuss a limited examination and possibility of proving some of the allegations regarding Mr. and Mrs. McDougal and Ms. Anspaugh. In the event I conclude that their case should be declined, which at this point is a distinct possibility, the DOJ can certainly override that decision and commit Department of Justice personnel and resources to both the investigation and prosecution of the case.

For your information, in the event I receive any press inquiry from any source whatsoever I am going to refer them to the supervisory officials in the Department of Justice and/or Resolution Trust Corporation.

Thank you.

Best Regards,

CHARLES A. BANKS
United States Attorney

CAB:bw

cc:

Floyd Mac Dodson
Executive Assistant U.S. Attorney

U.S. Department of Justice

Executive Office for United States Attorneys
Office of the Director

Main Justice Building, Room 1619
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

(202) 514-2121

MEMORANDUM FOR: Stuart M. Gerson
Acting Attorney General

THRU: Douglas N. Frazier
Principal Associate Deputy Attorney General

FROM: Anthony C. Moscato
Director

SUBJECT: Recusal by the United States Attorney's office for the Eastern District of Arkansas on a Resolution Trust Corporation Referral

The attached letter from United States Attorney Charles A. Banks, Eastern District of Arkansas, asserts his office has a conflict of interest in pursuing a possible prosecution of a Mr. and Mrs. McDougal and a Ms. Anspaugh for alleged check fraud, check kiting, misuse of position, bank fraud, forgery and conspiracy. Mr. Banks requests that the Department of Justice determine the prosecutive merit of this matter. The United States Attorney's office has previously prosecuted Mr. McDougal and two other individuals in late 1988 on similar charges and they were found not guilty. The Resolution Trust Corporation (RTC) has forwarded new and additional information to the United States Attorney's office on September 2, 1992, for consideration. As stated above, the second referral involves the same patterns of activity for which these individuals have been found not guilty, but present different transactions.

Mr. Banks believes his office should not be involved in the prosecutorial determination because it may give rise to the appearance of inappropriate prosecutorial motivation by his office. The matter may involve President and Mrs. Clinton as witnesses. Mr. Banks states in his letter to this office that the RTC's second referral of September 2, 1992, merits a "limited preliminary investigation" of the allegations contained therein.

On October 16, 1992, Mr. Banks informed the RTC by letter (attached) that his office would not participate in an investigation into this matter prior to November 3, 1992. He

stated further "[] that after such a lapse of time the insistence for urgency in this case [by the RTC] appears to suggest an intentional or unintentional attempt to intervene into the political process of the upcoming presidential election."

It is our understanding that subsequent to Mr. Banks' October 1992 response, the RTC contacted the United States Attorney's office regarding a Freedom of Information Act request it received from the media regarding this matter. The RTC inquired how release of any information may affect the investigation. Mr. Banks related to the RTC that there was no ongoing investigation into this matter and advised the RTC to follow "the appropriate FOIA law in responding to the request" (see letter to this office). Mr. Banks has resigned as United States Attorney effective March 1, 1993.

Also attached are copies of Urgent Reports prepared by this office dated October 7 and 20, 1992, notifying the Department that the RTC referred this matter to the United States Attorney's office. The RTC referral itself is also included.

MATTER SHOULD REMAIN IN USAO: _____

MATTER AND FILES SHOULD BE REFERRED TO: _____

_____

OTHER: _____

_____

_____

_____ _____

Stuart M. Gerson Date
Acting Attorney General

Attachments

U.S. Department of Justice

Executive Office for United States Attorneys
Office of the Director

Main Justice Building, Room 1619
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

(202) 514-2121

DEC 1 1993

MEMORANDUM FOR: Philip B. Heymann
Deputy Attorney General

THRU: David Margolis
Associate Deputy Attorney General

FROM: Anthony C. Moscato
Director

SUBJECT: Recusal of the United States Attorney's Office for the Eastern District of Arkansas

United States Attorney Paula J. Casey, Eastern District of Arkansas, requests approval to recuse her office from the cases entitled United States v. David Hale and all matters concerning Capital Management Services, Inc. and Madison Guaranty Savings & Loan. Ms. Casey was previously involved in Bill Clinton's gubernatorial campaigns in Arkansas. Mr. Clinton and his wife, Hillary Rodham Clinton, may have some knowledge concerning loan and check transactions which are the subject of these cases. Donald Mackey of the Fraud Section of the Criminal Division has been designated to handle the matters.

The Executive Office concurs with the designation and the need for Ms. Casey's recusal. Attached is the background information regarding the recusal. This matter is forwarded for your decision pursuant to USAM 1-1.171.

APPROVED: P.B.H/Don Mackey 12-22-93
/Philip B. Heymann Date

DENIED: _____
Philip B. Heymann Date

OTHER: _____

Attachment

U.S. Department of Justice

United States Attorney
Eastern District of Arkansas

Post Office Box 1229
Little Rock, Arkansas 72203

November 5, 1993

Mr. Phillip B. Heymann
Deputy Attorney General
U.S. Dept. of Justice
Main Justice Building
Washington, D.C. 20530

Re: United States of America v. David Hale

Dear Mr. Heymann:

The Eastern District of Arkansas is investigating matters pertaining to David Hale and a development company which he operated. Indictments were returned by a grand jury in September alleging fraudulent conduct on the part of Mr. Hale and two codefendants. Mr. Hale claims to have information implicating other people in fraudulent activities which are not related to the matters in the September indictment. There has been a great deal of speculation in the press concerning Mr. Hale's allegations.

I am confident that I and my staff are capable of investigating and prosecuting these matters competently and dispassionately. Whether my participation and the participation of my staff raises questions of the appearance of impropriety is a different question.

I am, therefore, asking that you approve my request to recuse me and all members of my staff from further investigation and prosecution of matters pertaining to Capital Management Services, Inc. and Madison Guaranty Savings and Loan.

Sincerely,

Paula J. Casey

PAULA J. CASEY
United States Attorney

PC/lc

DEPOSITION OF ROBERT P. CESCA
IN RE: S. RES. 120

FRIDAY, OCTOBER 13, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of ROBERT P. CESCA, called for examination pursuant to notice of deposition, at 10:25 a.m. in Room 640–A of the Hart Senate Office Building before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, ESQ.
Majority Associate Special Counsel
RICHARD BEN-VENISTE, ESQ.
Minority Special Counsel
JAMES S. PORTNOY, ESQ.
Minority Associate Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

LORI Y. VASSAR, ESQ.
Office of the Inspector General
Resolution Trust Corporation
1735 North Lynn Street
Rosslyn, Virginia 22209
On behalf of the Deponent.

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EXHIBITS

Robert P. Cesca

DEPOSITION NUMBER	IDENTIFIED
Exhibits 1890 through 1891	45, 1037
Exhibit RC–1	55, 1139
Exhibits 330 through 331	70, 1140
Exhibit 521	78, 1142
Exhibits 444 through 446	82, 1143
Exhibits 10982 through 10983	89, 1146
Exhibit 389	92, 1148
Exhibits 495 through 500	101, 1149
Exhibits 006272 through 006273	125, 1155
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Exhibit 365	143, 1158
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Exhibit 414	147, 1163
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Exhibit 6877	151, 1166
Exhibit RC–2	185, 1167
Exhibits 011735 through 011736	191, 1170
Exhibits 02479 through 02482	192, 1172
Exhibit 011803	198, 1176
Exhibit 363	198, 1177
Exhibit 6890	244, 1178
Exhibit 015592	260, 1179
Exhibit S 002064	293, 1180

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PROCEEDINGS

Whereupon,

ROBERT P. CESCA

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. O'CALLAGHAN:

Q Could you please state and spell your full name for the record.

A Robert Paul Cesca. It is spelled C-e-s-c-a.

Q Mr. Cesca, this deposition is conducted pursuant to Senate Resolution 120. The resolution establishes a special committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation and other related matters.

Section (1)(b)(2)(e) of Senate Resolution 120 authorizes investigation and public hearings into whether the report issued by the Office of Government Ethics on July 31, 1994 or related transcripts of deposition testimony, one, were improperly released

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to White House officials or others prior to their testimony before the Committee on Banking, Housing and Urban Affairs, pursuant to Senate Resolution 229; or, secondly, were used to communicate to White House officials or to others confidential RTC, Resolution Trust Corporation, information relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation.

That, in the most part, will be the focus of today's deposition.

When were you requested to testify?

A When I was requested to testify here?

Q Correct.

A I believe it was last Friday.

Q Was that October 6?

A If that's what last Friday was.

Q I think so. I think we can agree it was October 6.

MR. PORTNOY: We will take judicial notice.

THE WITNESS: You came into the office and told me.

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MS. VASSAR: That's right.
BY MR. O'CALLAGHAN:
Q This deposition is being taken in advance of public hearings that are going to be held by the special committee.
Mr. Portnoy and I are going to ask you a number of questions. You are testifying under oath. If you don't understand the question, let me know and I will rephrase it. If anyone needs a break, let us know and we will arrange it.
The stenographer to my right will prepare a record of the questions and answers. The deposition will be treated as committee confidential until the commencement of hearings. We also request that you treat the substance of the deposition as confidential as well.
A Okay.
Q Prior to the hearings, you will receive a letter from the committee telling you that you may come to the Senate to review the transcript of your deposition and make any corrections of transcription on an errata sheet. If you are called to testify at

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a public hearing, you will be permitted to have a copy of your deposition transcript four days in advance of your testimony. I understand that was the practice of the last round. If it changes, we will let you know, but I think that is the plan as we understand it to be presently.
A Okay.
Q You may be represented by counsel. Objections to the form of questions will be noted for the record. Counsel may object on grounds of privilege or relevance, and the committee chairman may rule on objections where the witness refuses to answer a question.
Are you represented by counsel today, Mr. Cesca?
A Yes.
MR. O'CALLAGHAN: Would counsel please state her name for the record.
MS. VASSAR: My name is Lori Vassar. I represent the Office of Inspector General. For the record, I would like to note that the production of any documents or the subsequent discussions of any of

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the documents is not to be construed as a waiver of any privileges or exemptions that the Office of Inspector General may raise with requests by third parties.

In addition, we reassert any privileges that RTC may raise on its behalf.

BY MR. O'CALLAGHAN:

Q I would also like to note for the record that just prior to the beginning of this deposition, delivery was made of a document which I believe was a document from your files, Mr. Cesca; is that correct?

A Right.

MR. O'CALLAGHAN: Ms. Vassar, would you like to characterize the document that has been produced?

MS. VASSAR: All of the documents?

MR. O'CALLAGHAN: No. The one --

MS. VASSAR: The particular document was not in Mr. Cesca's possession. It was held in the main Office of the Inspector General. It is, however, the calendar he used during the month of March. Because one of the dates there reflects a

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certain meeting that he felt was important, we wanted to be able to refresh his recollection as to the exact date, and therefore we are providing you the page.

MR. O'CALLAGHAN: Thank you. Both minority and majority counsel have been provided with a copy of it.

MR. PORTNOY: I will state for the record Mr. O'Callaghan has provided me with a copy at the same time that he has described the document.

MR. O'CALLAGHAN: For the record, the document that we are referring to, which does not have a Bates stamp number yet, is a two-page document. The first page is a cover sheet which was sent to the chief counsel of the Senate Banking Committee, and the second page is a page out of a personal calendar for the week ending March 20, for the dates March 17th, March 18th, March 19th, 1994. It includes a series of redactions. I think that adequately describes the document.

BY MR. O'CALLAGHAN:

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Q What is your present business address?
A It is -- I don't know what the address is of the ICC building. 12th and Penn.
Q That's in Washington, D.C.?
A Yes.
Q Who do you currently work for?
A I work for the Office of the Inspector General, Treasury.
Q What is your current position there?
A I am the Executive Assistant to the Assistant Inspector General for Audit.
Q Could you give us a brief overview of your employment history since you graduated from college.
A Sure. I was, in June of 1961, hired by the IRS inspection service as an internal auditor in New York City. Six months later I was in the military for two years.
Q Which branch?
A Army. In February of 1964, I returned to the staff in New York, again working as an internal

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auditor. In February of 1967, I transferred to Washington, D.C. to work as an internal auditor in the inspection service of IRS. I continued to work in Washington, D.C. up until April of 1983.

In April of 1983, I was requested by the Inspector General at the Treasury Department to go on 120-day detail. At the conclusion of the 120-day detail, the Inspector General asked me to apply for a position there, which I did.

In February of 1984, I became a permanent member of the Office of Inspector General at Treasury.

Q The 120-day detail was with the Office of Inspector General, Department of Treasury?
A That's correct; right.
Q What was your position?
A I was an Assistant Inspector General for audit.
Q I believe you left off in '84.
A '84. In February of 1984, I became a permanent member of the staff as an assistant Inspector General for audit.

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Now, I don't know if this is important or not, but at the time there were three assistant Inspectors General for audit. I was one of them. So I don't want to give the impression that I was the only assistant Inspector General for audit. There were three of us, and we each had our own individual responsibilities.

In August of 1986, I became the deputy Inspector General. I occupied that position up until May of this year, May of 1995, at which time I was reassigned to the position that I gave you originally.

Q Could you give me a brief review of your educational experience.

A Sure. I graduated from St. Bonaventure University in 1960 with a degree in business administration, majoring in accounting. I'm a certified public accountant and I am a certified internal auditor.

Q Did you do any graduate work?

A No, I did not.

Q Have you had any legal training?

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A I don't know if this qualifies for legal training, but I did spend a couple weeks down at the Federal Law Enforcement Training Center in a course designed -- it was a law enforcement course designed for nonlaw enforcement type people. And of course they covered a lot of the Third Amendment rights and that type of thing.

Q Probably more hands-on legal experience than most lawyers have the opportunity to enjoy.

During the time period March through August 1994, during that time period you were a Deputy Inspector General --

A That's correct.

Q -- Department of Treasury.

At that time, who did you report to at the Department of Treasury?

A Well, I reported to the Office of the Secretary. There was no Inspector General at that point in time.

Q For what period of time was there a vacancy in that position?

A From January of 1993 up until October of

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1994.
Q During the time period March through August 1994, at any time were you acting Inspector General during that time?
A Well, during that whole time from January of 1993 until October of 1994, although I was never designated as acting Inspector General, I carried out the responsibilities of the Inspector General.
Q Were you ever identified as acting Inspector General in any correspondence, to your recollection?
A Sure, yes. Don't ask me what pieces. But I was referred as the acting Inspector General. But from an official standpoint, I was never designated as the acting Inspector General.
Basically the delegations were that, in the absence of the Inspector General, that the deputy Inspector General kind of functioned in that capacity.
But in terms of an official piece of paper designating me as the acting Inspector General, that never occurred. I continued to be the deputy

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Inspector General. That was my official position and title.
Q Was there any reason why you weren't officially designated as acting Inspector General?
A No, not that I can think of.
MS. VASSAR: Can I clarify, perhaps?
MR. O'CALLAGHAN: Sure.
MS. VASSAR: Under the Inspector General Act of 1978 as amended, basically although he is under the general supervision, he was under the general supervision of the Secretary and the next in rank, but he did not have to report to anyone below there, and he basically was independent. The IG position is presidentially appointed and Senate confirmed. So, perhaps that's the reason why acting, the notation of "acting" Inspector General was not provided, and rather he acted as the deputy.
MR. O'CALLAGHAN: Okay.
MR. PORTNOY: Just to clarify. So it would not have been within the authority of the Treasury Department to appoint an acting?
MS. VASSAR: That is correct, because the

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Inspector General is independent. Therefore, it has to be separately confirmed by Senate. Technically, Secretary Bentsen at that time would not have had any authority to, per se, state.

MR. PORTNOY: Thank you.

MR. O'CALLAGHAN: Even in an acting capacity?

MS. VASSAR: That would not normally be done, just because of the independence of the Office of Inspector General.

So, what normally happens is, in the absence, during those periods of time when there is no Inspector General for the various agencies, the deputy, usually under the policies of the specific Office of Inspector General, is the one who is designated to act on behalf of the Inspector General until one is appointed and confirmed.

MR. O'CALLAGHAN: The deputy inherits the duties of the Inspector General without formally being recognized as an acting Inspector General?

MS. VASSAR: That's probably correct generally. For all intents and purposes he is the

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acting Inspector General.

MR. O'CALLAGHAN: Thanks. A little confusing, but hopefully we can all understand it.

BY MR. O'CALLAGHAN:

Q During the time period you said you reported to the Office of the Secretary, just to make clear, who specifically in the Office of the Secretary did you report to?

A As Lori indicated, the Inspector General functions under the general supervision of the Secretary. And as such, we do report to the secretary. There is a dual reporting responsibility. There is a dual reporting responsibility for the inspectors general to the secretaries and a reporting responsibility to the Congress.

Q During the time period March through August of 1994, how much contact did you have with Secretary Bentsen?

A Personal contact with the Secretary?

Q With regard to your official duties.

A I attended the senior staff meetings.

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There was never any contact where he and I met one on one. It was always as a member of a larger forum.

As an example, attending the senior staff meeting of all the assistant secretaries and under secretaries and then also the Secretary, brought the senior staff to Easton, Pennsylvania for kind of a retreat type of activity, and he was present.

But it was always among -- my personal contacts with him were always among a larger group of people.

Q How about on official correspondence and memoranda? How would you characterize the frequency of that type of exchange?

A I wouldn't say that it was -- outside of what our legislative requirements are in terms of issuing semiannual reports. Beyond that, I wouldn't say that there was a frequent amount of communication between our office and his office.

Q Did you have occasion during that time period to speak with the Secretary on the phone?

A I never spoke to the Secretary on the phone.

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Q Did you have a contact in his office that you --

A Well, some of the contacts could have been the -- we would have had contact with the Exec Sec.

Q Who was that?

A That was Mr. Ed Knight. Contact with Josh Steiner, both when he was chief of staff to the deputy secretary and then also later on as chief of staff to the Secretary.

Q So, you had reporting obligation to the Secretary; is that correct?

A That's correct.

Q Would that normally be facilitated by speaking or communicating with someone in his office?

A It could be facilitated by speaking with somebody in his office, that is correct.

Q Was that, in fact, done through March and August of 1994?

A That's correct. During that period of time, any communication I had with his office, and a lot of it was kind of on an informal basis where I would run into Ed Knight, I would see him in the

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dining room and we would have a brief chat, and that was about it.

Q During that time period, did you have people who reported to you?

A On our staff?

Q Correct. If you could tell me who they were and what positions.

A All the assistant inspectors general reported to me.

Q How many of those are there?

A At the time there were four.

Q What are their names?

A Okay. There was Jim Cottos, who was the assistant Inspector General for investigations.

Q Don't wait for me with my notes.

A Jay Weinstein. He was the assistant Inspector General for audit. John Balakos was the assistant Inspector General for planning and policy resources.

Q Cottos, is that C-o-t-t-o-s?

A That's correct. Weinstein is W-e-i-n-s-t-e-i-n. Gary Whittington was the

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assistant Inspector General for oversight quality assurance.

Q Anyone else who reported to you? Did you have any special assistant?

A I had no special assistants at the time, except there was counsel to the IG, who was Ms. Francine Kerner.

Q How do you spell that last name?

A K-e-r-n-e-r.

Q What were Ms. Kerner's responsibilities during that time period?

A She was counsel to the Inspector General.

Q What do those duties consist of in that position?

A Well, basically to provide legal services to the Office of Inspector General. That also includes legal services to the various components of the office also. So consequently, if there are interpretations of law that need to be made in the conduct of audits, then she would render those interpretations. If there was assistance that was needed in the conduct of an investigation, she could

provide that kind of assistance.
The office was made up of roughly three attorneys.
Q Who were they?
A Mr. Rick Doery. That's D-o-e-r-y. Ms. Tina Bak-Brevik, B-r-e-v-i-k. Bak is B-a-k. And then there was another part-time attorney, Ms. Sharon Separ, S-e-p-a-r.
Q Why was Ms. Separ part-time?
A That was her desire, to work part-time.
Q Mr. Cesca, are you aware of the committee's document request to the Office of Inspector General for the Department of Treasury?
A Yes, I am.
Q Did you search for responsive documents, notes, reports and memoranda?
A Did I what?
Q Did you search for responsive documents, notes, reports and memoranda?
A Yes.
Q Have all those been produced to the committee?

A Yes. Are you talking about every document in the file?
Q Every document responsive to the request.
A That was responsive to the request, that's correct.
Q Have you spoken with anyone other than your counsel prior to your deposition regarding this deposition?
A You mean between the time I was notified of the deposition and being here?
Q I guess any conversations you had about the deposition.
A Yes, I did.
Q Who did you speak with?
A I spoke to Ms. Kerner.
Q When did you speak with her?
A It was this week sometime. I don't know, Tuesday or Wednesday.
Q What did you speak with Ms. Kerner about?
A It had to do with an interpretation of an item that appeared on a time line.
Q You say time line --

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A It was a time line that dealt with the conduct of the investigation and it was a time line that dealt with the transcripts.
Q Just for clarity, when you are referring to investigation, you are referring to the investigation --
A Dealing with the contacts between Treasury people and White House.
Q That was conducted by the Office of Inspector General at the Department of Treasury, the Office of Inspector General, RTC?
A That's correct.
Q To aid in providing the OGE with information with regard to White House and Department of Treasury contacts?
A That's correct.
Q Just so it is clear.
A I was kind of interested, there was an entry made there. I didn't understand the background of the entry so I asked her to clarify that entry for me. Then I spoke to Jim Cottos, and I was anxious -- the reason I spoke to Jim Cottos was to see if he had

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a copy of the OGE determination letter. He didn't have one in his immediate file and I ended up not getting it.
That was the contacts that I had, and the reason I was asking him for it was just to have the document available to me so I could prepare for the deposition.
Q To help refresh your recollection?
A That's correct.
Q When you refer to the OGE determination letter, what specifically are you referring to?
A That was a letter that they issued to Secretary Bentsen based on their analysis of our investigative report.
Q Is that the letter and the analysis that you were seeking from Mr. Cottos?
A That's correct.
Q Did you speak with him about anything else?
A No.
Q Did you speak with Ms. Kerner about anything else?
A No.

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Q Have you spoken with any other persons regarding the deposition?
A Other than Ms. Vassar, I have not.
Q Just to help set up a frame of reference, can you describe to me how the Office of Inspector General functions within the Department of Treasury.
A The Inspector General, it is a presidentially-appointed, Senate-confirmed position. The Inspector General has a dual reporting responsibility to the Secretary and the deputy secretary. It is really the Office of the Secretary incorporating the Deputy Secretary and then also to the Congress.
Q How often do they report to the Office of Secretary and to the Congress?
A Well, we are required by legislation to report semiannually.
Q To both?
A That's correct.
Q Does the Office of Inspector General report to either the Office of the Secretary or the Congress more often than semiannually?

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A As the need dictates. If there is a need to report more frequently on events that occur during the course of our audits and investigations and a meeting is necessary, then we can set that meeting up.
Q What form does the reporting take?
A Well, if, for example, we do an investigation of a senior official that reports to the Secretary, that report of investigation would go to the Secretary, since he would be the action official on that investigation.
Q Would that report also go to the Congress?
A No, it would not, not in the normal course of doing business.
Q Unless Congress requested it?
A That's correct. In other words, Congress, normally speaking, they could be on our mailing list of internal audit reports, but in terms of reports of investigation, that's pretty much limited to the department itself, and is issued to those officials that would be responsible for taking whatever the appropriate administrative action would be.

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Q If, in preparing a report of that nature, another agency is involved or the conduct of another agency is involved, would the Office of Inspector General supply whatever agency was involved with a copy of the report?

A If another agency is involved because there are employees within that agency who are part of the investigation, then yes, that would take place. And whether or not we would do the investigation or ask for a collateral investigation on the part of the other agency, that can be worked out between the inspectors general and each of those agencies.

Q One more question before I continue. During the period of March through August of 1994, how many reports, if any, did the Office of Inspector General issue to either the Office of the Secretary or to the Congress?

A From the time period of March to August, we would have issued our semiannual report during that period.

Q How about during the whole year?

A I don't have that number in terms of the

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number outside of the semiannual report. In terms of the number of reports we would have issued, there would not have been a lot.

Q Can you give me a ballpark figure?

A I would say that probably less than five.

Q Please continue in your description of the OIG's office.

A Within the Department of Treasury, our investigative and audit responsibility extends throughout the department. In other words, we have the responsibility for conducting audits and investigations throughout the entire Department of Treasury. That includes all of the bureaus.

However, there are some exceptions, and these exceptions are stipulated in the legislation that established us as a statutory Inspector General.

The exceptions are, within the Internal Revenue Service, they were allowed to retain their own inspection service, and that means their internal auditors and internal investigators.

In the other law enforcement bureaus,

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Alcohol, Tobacco and Firearms, Secret Service, and the U.S. Customs Service, they were allowed to retain their internal investigators.

However, there is a provision that allows us to also conduct investigations within those bureaus.

Q If you feel it is appropriate?

A Well, if it is appropriate, exactly. What we have defined "as appropriate" are allegations of wrongdoing on the part of grade 15s and above. We are talking about senior managers and executives within each of those bureaus.

Reports of investigation and reports of audit conducted within those bureaus, except if it were the head of the bureau, are normally issued to the head of the bureau. In other words, if we do an investigation of the head of the bureau, that person would not be the recipient of that investigative report. However, if we do an investigation of a subordinate of the head of that bureau, then the head of the bureau would receive the report of investigation.

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Q Who would receive the report if the investigation was of the head of a bureau?

A Well, if it was the head of the bureau, it would probably go to the respective assistant secretary who would have supervisory responsibility over that bureau. As an example, the under secretary for enforcement has supervisory responsibility over Alcohol, Tobacco, Firearms, the Secret Service, the U.S. Customs Service, Federal Law Enforcement Training Center. Those heads report to that individual. So that individual would be the recipient of the investigative report.

Q Is there any mechanism in place that ensures the Office of Inspector General's independence from the rest of the agency?

A Well, the independence is established by virtue of its reporting authority in that the Office of Inspector General reports to no one other than the Secretary.

Q And the deputy, you said?

A The deputy secretary, right.

Q What are the responsibilities of the deputy

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secretary?
A Well, I think that that varies, and that varies in accordance to the -- I don't know -- you could probably refer it to the management style of the secretary.
Q How about during the period March through August 1994. I guess that's the relevant time period.
A I don't think I can address how they function together, one as a secretary and the other as a deputy secretary. I wasn't privy to knowing how they delineated their responsibilities. It would just be an assumption on my part.
Q Can you give me your impressions?
A I think that they still carried out their respective responsibilities. I think Mr. Altman still provided some management oversight to the various bureaus through the assistant secretaries.
And the Secretary, of course, carried out his responsibilities as the head of the office.
But in terms of being able to delineate how the relationship changed from prior to March of 1994

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to after March of 1994, I'm not really -- I really can't address that.
Q Do you know during what time period deputy secretary Altman served as deputy secretary, Department of Treasury?
A The time period? I can't give you the specific date, except that it would have been right around the time that the administration came in, the current administration came into power.
So, my guess is that it would have happened sometime shortly after January of 1993.
Q How long was he there for?
A Well, until he resigned.
Q Do you recall when that was?
A When he resigned?
Q Yes.
A It would have been roughly in the fall of 1994. By the way, you mentioned the independence of the Inspector General. There are other aspects of that independence.
Q Please go ahead.
A We have our own personnel authority. In

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other words, we do not rely on the department in terms of who we hire. We don't rely on them to process those actions either. Secondly, we have our own budget, which we defend both before OMB and the appropriation committees, both in the House and the Senate.

The Inspector General can promote people within his or her office without any concurrence from somebody outside of the Office of Inspector General. These are basically the operational activities within the department -- within the Office of Inspector General that gives it -- it is not only the reporting, but from an operational standpoint, there are certain things that we have, certain authorities that we have that allows us to function independently. We can audit and investigate pretty much anything that we choose.

Q Does the Inspector General's office at Treasury keep any other aspects of Treasury advised of ongoing investigations?

A We provide -- when you talk about other -- we will talk to and have periodic meetings with like

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the heads of the bureaus and we will talk about investigations that are going on within those bureaus. It is basically just a status report as to where we are, because the heads of those bureaus are going to be required to take the administrative action. So, we do provide them with -- it is basically a sit-down discussion where we talk about the status of both audits and investigations going on in their respective bureaus.

Then the same thing would apply to assistant secretaries and under secretaries as it applies to their areas of responsibility.

Q What if an inspector -- strike that.

In the event that an assistant secretary was the subject of an investigation, who would you keep apprised of the status of an investigation of that nature?

A Well, we would talk to the Secretary about it. In terms of the specifics, we would talk about basically the allegation that we were investigating.

Q You said that you would apprise him of the status. What does that comprise?

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A Where we were in the investigation, when we thought we could have it completed, when we would issue our report, when they would expect a report.
Q Would you relate to them any of the specific aspects of the investigation?
A I think only from the standpoint of the allegation. In terms of who we were talking to, no, we wouldn't disclose the names of the witnesses. Because in some respects those bureaus are making decisions, executive level decisions as it applies to these individuals. The worst thing you could have is where, all of a sudden, you have a senior official who now becomes a district director of any district, and that same individual is now under investigation.
So, to let the head of the agency know that a certain individual is under investigation, this then allows the head of the agency to make certain decisions as it applies to positions that that individual may be in consideration for.
Q So, you generally would keep the names confidential?
A They would know who the individuals are.

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Q They would know the names?
A Absolutely.
Q And the allegations but not the specific --
A We would not get into who it is that we were interviewing and what the results of those interviews were. It would just basically be we are doing an investigation of this individual, this is the allegation that we are investigating and we have had -- maybe the investigation we started it on a certain day and we expect to be finished by another day.
Q Why did you keep the names of interviewees confidential?
A I think basically it was for the protection of the interviewees.
Q Any other reason?
A Not that I can think of.
Q Was that just generally good investigative procedure?
A Yes. Well, you mean -- I think that when you interview -- I'm just speculating, but I believe that interviewees have certain protections of

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privacy. So, consequently, we try to honor that protection.

Q During the time period August through -- let me start from the beginning -- March through August of 1994, were there any employees at the Office of Inspector General that held dual roles working for the Inspector General's office and also serving in a capacity to any other offices?

A No. The only person who you could view as having a dual role, and that is the counsel to the Inspector General. The counsel to the Inspector General basically is an employee of the General Counsel. However, the Inspector General is that person's only client. That person is charged against our full-time equivalency quota and is paid out of the Office of Inspector General's appropriation.

Q When you say "full-time equivalency quota," what does that refer to?

A That's the level of funding that offices are allowed to -- that's the level of funding that offices are allowed to pay personnel expenses. The FTE basically establishes the number of people that

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you can have on your staff.

Q Is that a permanent position, the Inspector General's office, not for the individual but is it a position that is part of the organizational chart?

A Yes, it is.

Q How long has that been in existence, that slot?

A It has been in existence for as long as I have been affiliated with the Office of Inspector General.

Q You said the counsel to the Inspector General, during that time period was that Francine Kerner?

A That's correct.

Q You stated the counsel to the Inspector General's only client is the Inspector General?

A That's correct.

Q Does the counsel to the Inspector General have any other reporting obligations other than in the capacity to be counsel to the Inspector General?

A In terms of the official reporting capacity, her -- I don't know if you consider

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reporting capacity to the General Counsel, but basically her primary reporting is to the Office of Inspector General. The occupant of that, the incumbent in that position reports to the Office of Inspector General. However, the performance appraisal for the individual is performed by the General Counsel with concurrence from the Office of Inspector General.

Q What criteria are used in formulating your performance rating for the counsel to the Inspector General?

A It is a criteria that is established by the General Counsel with input from the Office of Inspector General.

Q Is that a standard criteria?

A The criteria that we use is based upon advice and quality of advice received by the Office of Inspector General from counsel. Counsel normally evaluates the individual based upon the legal -- the technical/legal aspects of carrying out that responsibility.

We look at it more from the standpoint of a

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legal service that is being provided to our office. And the General Counsel looks at it more from a technical standpoint.

Q Can the Office of Inspector General recommend promotions for the counsel to the Inspector General, or do those come from the General Counsel's office?

A The Office of Inspector General can make a recommendation.

Q Can the Office of General Counsel as well?

A I think that the Office of General Counsel can do that also.

Q Typically, where do recommendations for promotion come from for the counsel to the Inspector General?

A I would say that we have had very few where -- normally speaking, the individual who comes into the position is normally promoted to the highest level that that person can attain. I have seen it both ways. I have seen it where a lower level employee, where the Inspector General has recommended a promotion, and I have also seen it where, based on

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the qualities of work that the individual is performing, the General Counsel can also recommend that an individual be promoted to the next higher grade level.

MS. VASSAR: You are --

MR. PORTNOY: Just for clarity, in the government there are two kinds of promotions that can be used. One is a promotion from say, GS-13 to 14.

THE WITNESS: A career lateral promotion --

BY MR. O'CALLAGHAN:

Q You can do both.

MR. PORTNOY: Clarify whether you mean a promotion in pay grade or a promotion to a higher position.

THE WITNESS: Oh, oh. I see. I was referring to a promotion in terms of grade level.

MS. VASSAR: Were you referring to the attorneys underneath the counsel, not to the counsel itself?

THE WITNESS: Right.

MS. VASSAR: Not the counsel itself. Subordinates.

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THE WITNESS: Right.

BY MR. O'CALLAGHAN:

Q With reference to monetary pay scale promotions of the actual counsel to the Inspector General, that position, who normally has authority over that?

A Could you repeat that again?

Q Sure. It probably wasn't very clear. With regard to promotions with respect to monetary promotions and pay scale or grade for the counsel of Inspector General position held by Francine Kerner from March through August of 1994, who has authority with respect to recommending those types of promotions?

A I think both can do it.

MS. VASSAR: Can I just -- perhaps something else might be clarified, too. Do you know if the counsel routinely provides all legal opinions to the Office of General Counsel? Do you know?

THE WITNESS: Legal opinions to the Office of General Counsel?

MS. VASSAR: Do you know?

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THE WITNESS: No, I do not. Are you talking about whether she provides, the Office of General Counsel provides us with a legal opinion, whether that same legal opinion is provided to the general?

MS. VASSAR: Yes.

MR. PORTNOY: Why don't we get to that.

BY MR. O'CALLAGHAN:

Q That's easy enough to ask. The outstanding question is whether the counsel to the Inspector General provides the same legal opinions that it provides to the Inspector General, does it also provide those to the Office of General Counsel?

A You mean to kind of cc the General Counsel as it applies to an opinion?

Q First, generally.

A I don't think there is any prohibition against it.

Q Are you aware of any instances where that occurred in March through August of 1994?

A No.

Q When did you first learn that the Office of

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Inspector General was --

A Before you proceed, can we take a break?

MR. O'CALLAGHAN: Yes.

(Recess.)

MR. O'CALLAGHAN: We are back on the record.

BY MR. O'CALLAGHAN:

Q Mr. Cesca, did you ever learn that the Office of Inspector General was asked to assist the Office of Government Ethics in conducting an investigation regarding White House-Treasury contacts?

A Is the question did I ever learn?

Q Correct.

A Yes, I did learn.

Q When did you first learn of the request to the Inspector General's office?

A That was in early March.

Q And who made the request?

A The Office of Government Ethics.

Q Did the Inspector General's office receive any other requests from any other government entities

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to conduct an investigation?
A Yes.
Q Who else asked for that?
A I received a request from Congressman Wolf, Frank Wolf.
Q When did that occur?
A That occurred -- I don't know the specific date, but it was like --
Q I can show you a document so you don't have to -- to help refresh.
A It was probably March 2nd or 3rd, something like that.
Q I'm going to show you a document, two pages, a letter addressed to Robert Cesca signed by Frank R. Wolf, Bates stamped numbers 1890 and 1891.
(Exhibit 1890 through 1891 identified.)
BY MR. O'CALLAGHAN:
Q Take a quick look at that.
(Witness examined the document.)
Have you ever seen the exhibit with the Bates stamps 1890 and 1891 before?
A Yes, I have.

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Q When did you first see it?
A Probably March 4th. I will tell you what happened. Frank Wolf called me up on the phone and he asked me to conduct this investigation. So, I said yes. Then this memo was faxed to me. So that very same day -- now, whether that was March the 4th -- but it was the same day I had the telephone conversation with him.
Q When you said you said yes, to conduct an investigation?
A Yes.
Q What were the terms of the agreement with Congressman Wolf?
A It was to look into the matters surrounding the contacts between the Treasury and the White House.
Q Was this the first request you had to look into the contacts?
A Yes, it was.
Q Did you have any discussion with anybody regarding Congressman Wolf's request?
A Yes, I did.

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Q Who did you have discussion with?
A With Jim Cottos, who was the assistant Inspector General for investigations.
Q When did that occur?
A I'm just trying to think whether it was the same day or the day after. But if my recollection is correct, I believe it was on like a Friday. I don't know when the 4th was, whether that was a Thursday or a Friday, but basically as soon as I received the phone call and got the letter, I engaged in the conversation with -- well, he came over to my office and we talked about it.
Q What were the substance of those discussions?
A The substance of the discussion was it looks as though we were going to conduct an investigation concerning those contacts.
Q Did you discuss possible scope and timing of the investigation?
A Yes, we did.
Q What were the specifics?
A Just from a general standpoint, to discuss

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what would be the parameters -- I don't know if it was parameters. But we would have to basically investigate White House witnesses, Treasury witnesses; maybe even to some degree, how long would it take to do the investigation.

I'm almost certain that was on a Friday.
Q A Friday?
A Yes. And who would conduct the investigation, we even engaged in conversations around that.
Q Do you recall whether you suggested a tentative time frame for the investigation?
A I don't recall any time frame that we set out. It was basically where do we go from here. We have this request, now what are we going to do. As a result of the request, how are we going to handle, how are we going to be responsive to the request.
Q Was anyone else present at the meeting?
A There was somebody else present. It could have been Raisa Otero-Cesario, who was his deputy.
Q I know this is tough.
A R-a-i-s-a. Next name is O-t-e-r-o,

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C-e-s-a-r-i-o. She is the deputy -- at the time she was the Deputy Assistant Inspector General for investigations.

Q She was assistant to Cottos; is that correct?

A Yes.

Q You said you discussed who would conduct the investigation or who might possibly conduct the investigation.

A Yes.

Q Who did you discuss as possible --

A Mr. Cottos, he was almost ready to volunteer himself because of the level of individuals who were involved. He thought about the possibility of doing the interviews himself.

Q What was your reaction to that?

A Well, you know, here again, we are just kind of throwing out ideas. Of course, I didn't particularly care for that idea because then who would -- I mean, I would much prefer having him supervise the actual investigation as opposed to being out there conducting the investigation.

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Q He suggested doing the hands-on investigative work?

A That's just his nature, to jump right in. He is a professional investigator. That has been his career. He immediately saw himself as being an active member of the investigative team.

Q Did you have any subsequent meetings regarding Congressman Wolf's -- specifically Congressman Wolf's request?

A No. Because what happened right after that, the independent counsel, Robert Fiske, requested that, since this whole issue was within the purview of his investigation, suggested that any other investigations -- I can't think of the word -- that any other investigations not proceed.

Q And how was this communicated to you?

A I think originally it was communicated to me by phone. I think I heard it possibly from Jim Cottos. It happened over the weekend. When we came the work on Monday -- and it may have even appeared in the paper; I'm not sure.

But we were aware of the fact that --

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Q That happened the weekend following March 4th?
A That was that very same weekend, right, because Monday, we were aware that we were not going to proceed with our investigation, that the independent counsel asked us not the proceed.
Q Is it your recollection you first discovered about the independent counsel's request not to proceed from Jim Cottos on the telephone?
A It was probably a telephone call.
Q Over the weekend?
A No. It was that Monday. It was like, looking back and reflecting on that weekend, now whether or not I had seen it in the paper or not, I can recall having the impression that we may not be able to proceed with our investigation, that there was a good chance that we were going to be asked not to.
Q How did Mr. Cottos find out about Mr. Fiske's request?
A He found out about it the same way I did. We got a call, and it looks as though we are not

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going to proceed with this investigation.
Q Did Secretary Bentsen also make a request that the Inspector General's office conduct an investigation into the contacts?
A No, not at that point in time.
Q At any point in time?
A Yes.
Q When did that occur?
A That occurred on -- I believe it was June 30th. It was either June 30th or July 1, when I received a letter from Secretary Bentsen asking us to assist the Office of Government Ethics.
Q Did Secretary Bentsen make a request of anyone to look into the improper contacts?
A Yes.
Q At any time prior to that?
A Right. He asked the Office of Government Ethics to look into the propriety of those contacts.
Q When did that occur?
A That occurred at almost the same time that Congressman Wolf asked me to proceed with our investigation.

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Q What was the Office of Government Ethics' response to the Secretary's request?
A The Office of Government Ethics's response to the Secretary was basically indicating they do not conduct investigations, and it was their intention to contact the Office of the Inspector General -- they communicated to the Secretary that they would ask the Office of Inspector General at the Treasury department and the Office of the Inspector General at the Resolution Trust Corporation to assist them by conducting an investigation and providing them with the information so they could make a determination as to whether there was any ethical wrongdoing.
Q When were you informed that the OGE informed the Secretary of that?
A It was probably within two weeks. We had received a call from the Office of Government Ethics to have a meeting with them. The Office of Government Ethics corresponded to the Secretary, basically advising the Secretary of the role they would play. And it was their intention to meet with us and to discuss with us the opportunity for us to

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assist them in this effort, and that also they had planned to meet with the Inspector General because of Altman's acting position over at the Resolution Trust Corporation, that they were going to ask the Inspector General at the Resolution Trust Corporation to likewise provide an investigation, to conduct an investigation and provide the results to them.
Q What was your reaction to learning that information?
A Well, I felt as though that we had a responsibility, that that was an appropriate request on the part of the Office of Government Ethics, to ask that we conduct the investigation.
Q After the conversation you had with Mr. Cottos regarding the abeyance of the investigation that Congressman Wolf had requested, when was the next conversation or communication you had regarding possible investigation of White House/Treasury contacts?
A Probably the meeting that we had with the Office of Government Ethics.
Q When did that occur?

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A That occurred on March 18th.
Q For the record, I would like to show you a document which was delivered shortly before the deposition. I'm going to mark a copy for purposes of this deposition, if that's okay with you, Mr. Portnoy. I will mark it Exhibit RC-1, just for purposes of identification.
(Exhibit RC-1 identified.)
MR. O'CALLAGHAN: For your information, the exhibits are not appended to the deposition transcripts. This is just purely for identification purposes, going back over the transcripts so we can determine what we were discussing.
THE WITNESS: Okay.
BY MR. O'CALLAGHAN:
Q I'm asking you to take a look at the second page of the document, which appears to be a portion of a weekly calendar, week ending March 20th. The days marked are Thursday, March 17; Friday, March 18th; and Saturday, March 19th.
Have you ever seen document RC-1 before?
A Yes, I have.

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Q What is RC-1?
A RC-1 is a copy of a page out of my calendar.
Q There are a lot of black marks on the calendar which appear to be redactions; is that correct?
A That's correct.
Q Did you perform the redactions on this document?
A No, I did not.
Q Who performed the redactions on the document?
A I assume that a representative of counsel.
Q Do you know who did?
A I do not know specifically.
Q Throughout the whole course of the testimony, we are not going to ask for speculation. If you don't know, say you don't know. There is nothing wrong with that.
A I don't know.
Q I would like to direct your attention to Friday, March 18th. There is an entry at 1:30, it

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appears. Could you read to me what is written there.
A It says "ethics meeting here." "Here" meaning the Office of Inspector General at Treasury. "Jim and Francine, Jane Ley, Stuart Rick."
Q After looking at RC-1, does that refresh your recollection as to when the next time you had discussions and communication concerning an investigation of Treasury/White House contacts?
A Yes. That's when we discussed the Treasury/White House issue.
Q And who are Jim and Francine?
A Jim is Jim Cottos, the assistant Inspector General for investigations. Francine is Francine Kerner, counsel to the Inspector General.
Q The other people listed there?
A Jane Ley and Stuart Rick are from the Office of Government Ethics.
Q And were they all in attendance at the meeting?
A They were.
Q Was there anyone else in attendance at that

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meeting?
A I was.
Q How long did the meeting last?
A Oh, roughly an hour, hour and a half.
Q Were there any notes taken during the meeting?
A I did not take any notes, no. Some people may have taken notes, but I did not.
Q Do you recall seeing anyone taking notes?
A I don't recall anybody taking notes.
Q Do you know if the meeting was recorded?
A No, it was not recorded.
Q What was discussed at the meeting?
A Well, initially it was an introduction of Jane Ley and Stuart Rick to our office, that they were requesting our assistance in the conduct of an investigation concerning the White House/Treasury contacts.
Q Had they made a formal request prior to this time?
A Did they make a formal request?
Q For assistance.

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A If a formal request is a request in writing, I didn't see any request in writing. It was basically a telephone conversation requesting that we have a meeting.

Q Okay.

A And at the point in time, when we would be allowed to proceed with the investigation, that we would conduct the investigation and the Office of Government Ethics would basically lay out those provisions of the standards of conduct that would apply in the situation, and give us at least a list of questions it thought appropriate that would need to be asked of the various witnesses.

It basically was an introductory meeting to talk about some logistics that we needed to look ahead toward so that we could be on board once we were given the authorization to proceed with the investigation.

And then they also indicated that they would likewise be meeting with the Office of Inspector General at Resolution Trust Corporation.

Q Had they met with him previously?

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A I'm not aware that they met with him previously. But they met with us prior to them going over to the Resolution Trust Corporation. If there was a prior meeting, I'm not aware of it.

Q Do you know if there was a conscious effort to meet with Treasury IG's office before RTC IG's office?

A Not a conscientious effort.

Q Did the people from OGE provide you with any documents to help frame --

A I don't recollect that any documents were exchanged at that point in time.

Q I do this too, but if you can wait until the end of my question, because otherwise the transcript gets all muddled.

A Oh. I'm sorry.

Q It is perfectly understandable. I do it all the time.

A Okay.

Q I know you are eager to answer the questions.

A I thought you had finished the question.

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I'm sorry.
Q After the March 18th meeting with the folks from OGE, when was the next communication you had regarding a possible investigation to be done of White House/Treasury contacts?
A Are you talking about the next meeting with the OGE or anybody?
Q Any meeting, any communication that you recall.
A There were some communications between our office and representatives from the General Counsel's office.
Q What were those communications?
A Because of the hearings, and the Secretary was going to have to testify at the hearings --
Q Just for clarification, and I will do this from time to time, if you could identify what hearings you are referring to.
A The hearings that were scheduled on the Whitewater/White House/Treasury contacts. Do you want to know which committees?
Q It would be helpful.

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A The House Banking Committee and the Senate Banking Committee were both scheduling hearings in which the Secretary was going to have to testify.
Q When were you first made aware that they were going to be called to testify for those hearings?
A I don't know the date.
Q Was it in March, or was it after?
A It was probably after March. I'm not aware that those dates had been established in March. I think it was subsequent to that.
Q If you can think of when you first heard of it any time during the course of the deposition, just let me know.
A Okay.
Q So, the outstanding question --
A Well -- go ahead.
Q I'm trying to remember what I just asked you.
A About meetings.
Q Correct. After the March 18th meeting, what was the next communication you had?

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A Well, there were meetings between representatives from our office, and I would have been included in some of those between individuals who were responsible for preparing the Secretary for the hearings, which is kind of a normal thing whenever the Secretary is going to be required to testify, and then our office in terms of logistics surrounding our receipt of documents, us conducting our interviews, when did we think we would complete those interviews.

It was just kind of -- the discussion centered around the logistics of what we had to do and the logistics of what lawyers and General Counsel had to do.

Q This is all in anticipation of conducting an investigation?

A That's right, right.

Q Who in General Counsel's office or -- let me strike that.

You said you were in contact with people who prepared the Secretary for the hearings.

A Right.

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Q Who were the people who did that?

A That would have been individuals working in Ken Schmalzbach's office. Now you are going to ask me to spell Schmalzbach. S-m-a-l-t-z-b-a-c-h.

MR. PORTNOY: For the record, S-c-h-m-a-l-z-b-a-c-h.

BY MR. O'CALLAGHAN:

Q Who is Mr. Schmalzbach? What is his position?

A He is the Assistant General Counsel for Administration. And also Steve McHale, who was his deputy.

Q What did are Mr. Schmalzbach's responsibilities? To be more specific, what were his responsibilities at that time?

A I think his office was tasked with the responsibility of preparing the Secretary for the hearings and possibly even for other witnesses that would have had to appear.

Q And how about Mr. McHale?

A Well, I think that his responsibilities were similar. It was that office that had that

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responsibility.
Q But did Mr. McHale -- did he perform research? Was he involved in policy?
A Well, I think that -- if you are talking about policy of the office, well, sure, he probably does have responsibility for policy within that particular office. I think that from the standpoint of this investigation, I'm sure he was conducting research as part of his responsibility to the Secretary. They could probably give you a better idea in terms of what their respective role was.
Q Okay. It is always good to get everyone's perception.
A Right.
Q Did they have --
A One other thing. They were also our liaison in terms of getting Treasury documents, too.
Q You anticipated my next question. With regard to the investigation that you were going to conduct into White House/Treasury conducts?
A Yes.
Q Anyone else who worked for Mr. Schmalzbach

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who you had contact with?
A Not that I can recollect. It seems those were the two players, the two individuals within that office that we had dealings with.
Q During the time period March through August of 1994, did you have any contacts with anyone else in the Office of General Counsel with regard to the investigation, either to help coordinate efforts or for any other reason?
A I know, in going through my materials, there was an E-mail message in which Francine Kerner had contact with Robert McNamara.
Q Who is Mr. McNamara?
A He is the Assistant General Counsel for Enforcement.
Q What was the nature of that contact?
A I don't know. I was not involved in that meeting. The E-mail said that Mr. McNamara and Mr. Schmalzbach spoke to Ms. Kerner, and again based on my recollection of the E-mail message, it got into, again, some of the logistics surrounding our investigation and their roles.

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Q When did that occur?
A I think that was probably in June sometime.
Q Had your investigation begun at that point?
A No, it had not. A lot of these meetings were just in anticipation that at some point we were going for be asked -- at some point in time we were going to begin the investigation, and we knew that the time frame in which to conduct the investigation was going to be rather short.
Q Why is that? Or why was that?
A Because the Secretary was interested in having these actions completed by the time the hearings came about.
So, we knew we were dealing within a short time frame, and so to the extent that we could work out logistics concerning the investigation prior to the actual start of the investigation, we felt as though it would put us in a better position then to proceed as opposed to kind of working out the logistics after you got the authorization to proceed with the investigation.

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Q How did you become aware that the Secretary wanted the investigation to be concluded before the hearings?
A The Secretary sent me a letter. I think it was dated June 30th or July 1st. It was right after we received the go-ahead from the independent counsel. The Secretary sent me a letter in which he asked that we aid the Office of Government Ethics in his request of the Office of Government Ethics and that he would appreciate it if we could complete our work prior to the start of the Congressional hearings.
Q After the March 18 meeting, you said you had communications with Office of General Counsel in anticipation of getting ready for the logistics of conducting the investigation.
A Yes.
Q Do you recall exactly when those communications took place?
A It seemed to me that they were during the month of June. There may have been a meeting or two in May.

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Q Anyone on your staff have any meetings during May with regard to this investigation or potential investigation?
A No, not among themselves.
Q With anyone else?
A No. There were discussions, informal discussions that centered around, you know, when are we going to hear, when are we going to get the authority to proceed. We had heard that the White House was already given the authority to review documents. We had not received the authority to review documents.
We were concerned that, in some respects, that we were dealing with a very short time frame and there was going to be a lot of work that had to be accomplished.
Prior to that, we also had another meeting with the Office of Government Ethics too, and that was in June, in which they gave us more specificity as it applied to what we needed to address.
Q I'm going to show you a document now which is going to help for purposes of refreshing your

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recollection and ask you for your comments on it. It is a two-page document, Bates stamped 330 to 331. It is an interoffice memorandum dated 13 May 1994, 4:34 p.m. It is from Francine Kerner. Department says "Counsel." It is to James Cottos and Raisa Cesario, and there is a cc to Robert Cesca. The topic, the subject is "Discussion on Whitewater."
(Exhibit 330 through 331 identified.)
BY MR. O'CALLAGHAN:
Q I would like you to take a look at that.
Take a moment to review it. Then I'm just going to ask you a couple questions.
(Witness examined the document.)
Have you had a chance to review Bates stamps 330 and 331?
A Yes.
Q First of all, have you ever seen 330 and 331 before?
A Yes, I have.
Q When did you see it?
A I saw it when it was sent from Francine Kerner. And then I looked at it as a part of my file

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in preparation for this particular session, deposition.

Q Does this help refresh your recollection whether you had any meetings in May regarding issues connected to possible investigation of White House/Treasury contacts?

A Well, you know, if I hadn't had this and you asked me the question as to whether or not I knew of a meeting that occurred in May, I probably wouldn't have a recollection of that meeting.

Q But does it refresh your recollection now that you see it?

A Well, the only thing that -- just looking at the E-mail message itself, that's the only thing that, I'm assuming that these are the items that were discussed at that meeting. In terms of any other discussions that transpired at that meeting, I don't have a recollection of what those other items might be.

Q That's fine. I am just inquiring whether you recalled the meeting in May with the people identified.

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A I'm not certain those were the ones who called the meeting. It could have been a meeting called by the other two individuals, Ken Schmalzbach and Dennis Foreman.

Q Did you have a meeting in May with Ken Schmalzbach and Dennis Foreman?

A Apparently, yes.

Q Who is Dennis Foreman?

A The Deputy General Counsel.

Q At the time?

A At the time.

Q What were his responsibilities and duties at that time?

A Well, his duties and responsibilities as it applies to being the Deputy General Counsel?

Q Correct. Who is his boss?

A His boss is the General Counsel, who was Jean Hanson.

Q Who reported to Foreman?

A Ken Schmalzbach.

Q Anyone else?

A All the Assistant General Counsels within

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the Office of the General Counsel reported to the General Counsel's office.

Q I would like to direct your attention to the fourth paragraph, which is numbered 3, which reads "Barring unforeseen obstacles, Bob agreed that OIG could have a report on the three meetings at the White House concluded within three to four weeks of Fiske giving us the okay to proceed."

Do you recall that being discussed?

A I have a recollection that we discussed that.

Q Do you recall -- does "Bob" refer to you in that paragraph?

A That's correct.

Q Do you recall how you determined that you thought a report could be done within three to four weeks?

A Had we made that determination?

Q Correct.

A We had within the office. We felt as though that we could complete our investigation within that period of time. Of course, assuming that

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all the pieces fell into place.

Q And there is a reference to OIG could have a report on the three meetings at the White House. What does that refer to?

A Those are the three meetings that had been publicized that had occurred between the Treasury people and the White House people.

Q Was your calculation about completing an investigation within three to four weeks based on an understanding there were three meetings?

A It was based on our understanding of the three meetings and then also what we might have to do to satisfy the needs of the Office of Government Ethics.

Q I would like to direct your attention to the second page.

A Uh-huh.

Q And item 8 reads "Dennis wants to talk with Jean Hanson's private attorneys who asked him not to agree that the OIG interview needed to come first."

What does that refer to?

A I really don't know.

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Q Do you recall that?
A No.
Q Looking at 330 and 331, does this help refresh your recollection as to whether there were any meetings earlier in May and April that might have taken place regarding possible investigation into White House/Treasury contacts?
A No, it does not.
Q After reviewing 330 and 331, do you recall whether there were any meetings later in May regarding the subject that either you or anyone on your staff attended?
A Not that I can -- not that I recollect. During May?
Q Correct.
A Not that I recollect.
Q Any communications of any kind?
A Well, I'm sure that there were communications. Drawing the distinction between formal communications where we sat down and had official meetings as opposed to have we heard anything, what's going on. We knew that this was an

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issue that we were going to have to deal with. So, there were communications among us within the office. But, again, it was informal telephone conversations, or if we were at a meeting, staff meetings, we might enter into a conversation.
Q Do you have any specific recollection of the substance of any of those discussions?
A No. At that point it was basically centered around just conducting the investigation, and a lot of it, at that point, was dealing with the logistics of it.
Q Any communication with the people at RTC or OGE during this time?
A During May, I didn't have any contacts with people from --
Q March through the end of May, I guess, other than what you have testified to.
A We may have had discussions with the RTC because we knew they were going to be a player in the investigation. But I don't recollect where we really got together and sat down up through May.
Q Who was coordinating the efforts to prepare

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for an investigation during this time period? Once again, I'm speaking to March through the end of May of 1994?

A Jim Cottos would probably be the one that would have been more heavily involved in terms of kind of preparing for the investigation, and also Francine Kerner would have probably been working with Jim.

At that point, we really hadn't heard back from the Office of Government Ethics in terms of what were the specific issues that they wanted us to deal with.

Q They had given you a general sketch during the March 18th meeting?

A That's right.

MR. PORTNOY: Off the record.

(Discussion off the record.)

MR. O'CALLAGHAN: Let's go back on the record.

BY MR. O'CALLAGHAN:

Q I would like to show you what has been Bates stamped number 521, which appears to be copies

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of phone messages. There are three of them.

(Exhibit 521 identified.)

BY MR. O'CALLAGHAN:

Q Have you ever seen the message which is on the top of the page?

A Yes. Well, I have seen it because it is directed to me. So, I would have seen this message, right.

Q Can you tell me what this message refers to? Let me state for the record it says "For Bob. Date 6/2. Time" I think "9:56 a.m."

A I don't know if that is a 9 or a 4. 9:56 a.m. It is from Jack Adair of IG, RTC, "re: Joint investigation." Do you want me to address --

Q If you could identify what the call was about.

A I'm sure that the discussion involved our joint investigation of the White House/Treasury contacts in the Whitewater investigation. And it could very well have been a telephone conversation, maybe setting up a meeting between our respective offices.

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Q Had you received the go-ahead to initiate the investigation at this point?
A No, we had not.
Q When did you receive that?
A We received the go-ahead on June 30th.
Q So, this was a preliminary get together?
A That's correct.
Q Why don't you describe it for me.
A I think that's probably what the intent of what the phone call was, that we should get together and work out some of the logistics. At that point, that's what our involvement would have been. Our discussions would have centered around working out the logistics in terms of how we were going to proceed with the investigation.
Q And there are some initials in the lower left-hand corner of that tablet. Do you recognize the handwriting there?
A Yes.
Q Whose handwriting is that?
A That's Kimberly Beverly, who was a secretary in the Office of -- in our office.

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Q And does that read KB?
A That's right.
Q You stated earlier that during the time period March through -- actually, is it right that the period March 1994 through June 19 -- end of June 1994 that the people who were coordinating and preparing for the investigation were Jim Cottos and Francine Kerner?
A Within our office.
Q What is Jim Cottos's background?
A He is a career criminal investigator. He came to our office in November, December 1992.
Q Where was he before that?
A Before that he was a criminal investigator in the Office of Inspector General at Health and Human Services.
Q Do you know how long he worked there?
A I don't know. I don't know.
Q How long has he been an investigator?
A How long had he been an investigator? Over 20 years.
Q What is Francine Kerner's background?

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A Prior to coming to work for us, she had been on, I think, maternity leave. Her previous employment prior to coming to us, she worked in the Office of Inspector General to Department of Commerce.

Q What was her position there?

A She worked on -- the counsel to the Office of Inspector General. Whether she was the counsel or she worked on the staff of the counsel, I'm not sure. But she worked in an IG office.

And then prior to that, she was a prosecutor in Brooklyn.

Q And how were Mr. Cottos and Ms. Kerner chosen to lead the effort to prepare for the investigation?

A Well, Jim was the head of our Office of Investigation. So, it was natural to assign him the responsibility for conducting the investigation. Ms. Kerner, being counsel to the Inspector General, was to provide legal advice and any other assistance that was necessary to the conduct of the investigation.

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Q I would like to have you take a look at what's Bates stamped 444, 445 and 446.

(Exhibit 444 through 446 identified.)

BY MR. O'CALLAGHAN:

Q It is a three-page document. It consists of a number of handwritten notes.

A Yes.

Q Do you recognize the handwriting on Bates stamps 444 through 446?

A I believe it is Jim Cottos's handwriting.

Q Have you ever seen this document before?

A No, I have not. Well, they are his notes of our staff meeting.

Q You had a staff meeting on June 22, 1994?

A Apparently.

Q Do you recall there being any discussion at that meeting? I would like to direct your attention to the middle of the page, under the heading "Francine." It is the fifth line down. It appears to say "expressed concern over Francine's reporting chain. Memo drafted by Francine to Dennis Foreman."

A Uh-huh.

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Q Do you recall discussions addressing that issue?
A I don't recall us discussing it, but apparently we did discuss it.
Q Do you recall similar --
A I remember that concern being raised, absolutely.
Q Who raised that concern?
A I'm not sure whether or not Jim raised it, or maybe even Francine herself may have raised it. I know there was a concern over it. And it may have been as a result of that concern that we ended up receiving a letter from the General Counsel basically establishing a fire wall between Francine and the General Counsel's office, stating that, in effect, for the period of that investigation, Francine would be basically working for us and I would evaluate her on her performance during that period, et cetera.
Q Do you know who drafted that fire wall letter?
A I don't know if it was Francine or if it was drafted in the Office of the General Counsel.

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I'm not sure.
Q You don't know?
A I don't know who drafted the letter.
Q I would also like to direct your attention further down the page. Still under the Francine heading after the "call RTC," two-thirds of the way down is a little bullet mark or slash that says "limiting scope to communications between Treasury and the White House." Do you see that?
A Uh-huh.
Q It is on page 444. You need to articulate your answers, yes or no.
A What was the question?
MS. VASSAR: Do you see the --
THE WITNESS: Yes.
BY MR. O'CALLAGHAN:
Q Do you recall any conversations which addressed that issue, whether you discussed that at a staff meeting?
A There probably was not extensive discussion on it.
Q Was or was not?

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A There was not extensive discussion on it. I think what they are referring to is limiting the scope of the investigation to communications between Treasury and the White House.

Q Do you recall who first brought the subject of limiting the scope to communications between Treasury and the White House?

A Since it is under Francine's heading here, she was probably the one who raised it at the meeting. In terms of whether or not there were previous discussions regarding the scope of our investigation, there probably was some communications because, in thinking through the logistics of what we had to do, of course, scope became a significant part of that.

MR. PORTNOY: I would like the record to be clear.

MR. O'CALLAGHAN: I think I am going to be doing that for you.

BY MR. O'CALLAGHAN:

Q With regard to any questions I'm asking you, I'm asking for your recollection, not to make

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speculation as to what the thought is on anything.

MR. PORTNOY: In that regard, you were exactly correct. Could you clarify whether your testimony regarding the person who raised this subject was Ms. Kerner, could you clarify whether that was a recollection or a surmise?

MR. O'CALLAGHAN: I was intending to follow up those questions.

THE WITNESS: I am surmising that since this mention is made under a caption that mentions Francine's name, that it was Francine who raised that as an issue during the course of this meeting.

BY MR. O'CALLAGHAN:

Q The question following that is, do you have any recollection that Ms. Kerner ever brought this subject up or first --

A I don't have that recollection.

Q Mr. Cesca, do you remember the next meeting, when the next meeting was that occurred regarding a potential investigation of White House/Treasury contacts?

MS. VASSAR: Could you clarify, between

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whom?

BY MR. O'CALLAGHAN:

Q Anyone in the Office of OIG from Treasury.

A I know that we had a meeting with the Office of Government Ethics.

Q When did that occur?

A That occurred in late June, June 23rd, 24th, something like that.

Q What was the substance of the discussions of that meeting?

A The substance of the discussions of that meeting centered around the specific issues that the Office of Government Ethics wanted us to pursue, in which they also gave us some ideas of the line of questioning they also wanted us to include in the conduct of our investigation.

I also believe that it was at that meeting that there was some legal interpretations that they wanted from the department in terms of the authorities that the Secretary may have had in designating Altman as the acting director of the Resolution Trust Corporation and that type of thing.

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Q Who attended the meeting?

A I don't remember everybody who was there. I was there. Jim Cottos was probably, or Francine would have been there. Jane Ley. I think it was Leslie Wilcox who was there and Stuart Rick.

Q Anyone from the RTC IG's office?

A Not that I recollect.

Q And how long did that meeting last?

A Probably two hours.

Q Had you reached any agreement with regard to how you were going to conduct the investigation with OGE?

A When you refer to an agreement, I think that we had a clear understanding -- I think we had a clear understanding of what our responsibilities were going to be.

Q How would you characterize the relationship between OGE and Treasury IG in coordinating this effort?

A I felt there was a sense of cooperation, that we were interested in doing the job that they felt was necessary in order for them to carry out

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their responsibility. I think it was a professional meeting. It was very cordial. There was discussion and some debate in terms of -- I don't even know -- it was mainly discussion in terms of what we needed to do and getting clarifications of what they wanted us to do.

Q Any specific instances where there were differences of opinion on what to investigate?

A Not really, no.

Q When was the next meeting that occurred?

A Probably the next meeting that would have occurred, because now we are getting close to the end of June, and it was June 30th, July 1 when we were given the go-ahead to proceed with the investigation. And I think that probably the next meeting would have been with Jack Adair and his staff.

Q I would like to show you some pages from your calendar which may help refresh your recollection or may not. It is a two-page document, Bates stamps 10982, 10983.

(Exhibit 10982 through 10983 identified.)

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BY MR. O'CALLAGHAN:

Q It is a copied portion of the daily calendar. The official title is "United States Government appointment book 1994." It is for the period the week beginning June 27th, and it is Monday, June 27th; Tuesday, June 28th; and Wednesday, June 29th.

Have you ever seen those two pages before?

A Yes.

Q What is 10982 and 83?

A 10983 is a copy taken from my daily calendar. It is a copy of a sheet taken from my daily calendar.

Q There appear to be redactions that were taken off the second page of 10983. Did you make those redactions?

A No, I did not.

Q Do you know who did make those redactions?

A No, I do not.

Q There is an entry on Tuesday, June 28th at 3:30. Could you read that to me?

A Yes. It indicates a meeting between me,

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Jim Cottos and Francine Kerner.
Q And there is a room number there.
A Room number 2412, which is the office number of the Office of Inspector General.
Q Did this meeting occur before the meeting you had with the RTC people, or did it include the RTC people?
A I don't believe it included the RTC people. Otherwise, their names would have been mentioned here.
Q Is that your handwriting?
A No, it is not.
Q Whose handwriting is that?
A It is probably the handwriting of -- I'm trying to think of the secretary. Brenda Payne.
Q What does this entry refer to?
A It refers to a meeting that I had with Jim Cottos and Francine Kerner. I don't recollect what the subject matter of that meeting was.
Q Do you recall if you had any meetings in late June with Mr. Cottos and Ms. Kerner regarding preparation for the investigation?

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A Probably. Whether or not this was that specific meeting, because there were other things going on in the office, too. By virtue of the fact that there was nothing indicated here as to the purpose of the meeting, it could have been an issue other than the White House contacts.
Q You don't recall the substance?
A I don't recall, no.
Q I would like to show you a document Bates stamped 389.
(Exhibit 389 identified.)
BY MR. O'CALLAGHAN:
Q 389 is a one-page document. It is a letter, a memorandum on Department of Treasury letterhead. It has a date stamp on it of June 27, 1994. It is a memorandum for Jean Hanson from Robert Cesca. The subject is "provision of legal advice and services to OIG."
Have you seen the document 389 before?
A Yes, I have.
Q When did you first see that?
A When I signed it.

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Q Is document 389 a document you referred to earlier in your testimony?
A Yes, it is.
Q What is document 389?
A Document 389 is a memorandum to Jean Hanson, General Counsel, from me concerning Ms. Kerner's position as the counsel to the Inspector General and the conditions under which Ms. Kerner would function during the period of the investigation.
The nature of the memorandum is to establish a fire wall between the Office of -- between Francine Kerner and the Office of General Counsel.
Q Why was this memorandum written?
A The purpose of the memorandum was to indicate, to establish this fire wall. But because of the relationship that exists with counsel to the IG and the General Counsel, we thought it necessary that the counsel to the Inspector General function totally independent from the Office of General Counsel.

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Q Were there any events that particularly spurred the creation of this document? My question is why the timing, why was it created at this time?
A It was created at this time because Ms. Hanson was the subject of the investigation. So, to create a total separation from Ms. Hanson and Ms. Kerner, we felt that it was necessary to establish the ground rules under which Ms. Kerner would be functioning during the course of the investigation.
Q Was there ever any thought of not including Ms. Kerner in the investigation?
A Yes, there was.
Q What were the discussions that occurred concerning that?
A Well, the proposal was given to me, and having thought through the proposal, I decided that it would be appropriate for Ms. Kerner to continue to provide legal services to the Office of Inspector General.
In going through that deliberation, I considered the fact that Francine Kerner had been

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hired by the former Inspector General, that Francine Kerner had previously worked in an Office of Inspector General, had never been directly an employee of the Office of General Counsel, that she --

MS. VASSAR: At what time? When you state she was never an employee of the Office of General Counsel, at what time?

THE WITNESS: She was not hired by the Office of Inspector General from the staff of the Office of General Counsel.

She had a complete appreciation of the independent stature, the significance of the independent stature of the Office of Inspector General.

I had worked very closely with her for the entire time that she was employed by the Office of Inspector General, and that had been, oh, I guess since 1991, maybe early 1992.

There was never any doubt in my mind that she ever put the Office of Inspector General in a compromising position, that she was a good advocate,

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was a very effective advocate for the office. I had a lot of trust in her.

BY MR. O'CALLAGHAN:

Q Who presented a proposal to you that she might not be appropriate to continue in her position?

A I'm not certain who proposed it. I could speculate that it could have been Mr. Cottos, or it could have been Ms. Kerner herself.

MS. VASSAR: You don't need to speculate.

THE WITNESS: Okay.

BY MR. O'CALLAGHAN:

Q Did the proposal come out of the Office of Inspector General?

A I don't know.

Q Did it come out of the Office of General Counsel?

A If you see Francine Kerner as coming from the Office of General Counsel, then it could have been her.

Q But you don't know?

A I don't know.

Q Who drafted this memorandum? Who is the

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author?
A Francine Kerner.
Q And how did she come to draft this?
A Since she was our counsel, I think she was in the best position to draft this kind of a letter. She drafted it, I reviewed it.
Q Did anyone give her direction on what to include in the memo?
A No.
Q Did she consult with you before writing the memo?
A Yes.
Q And what was the nature of the consultation?
A The nature of the consultation was, generally speaking, what the memorandum would include.
Q You said the purpose of this memorandum was to create a fire wall between the Office of General Counsel and Inspector General with regard to Jean Hanson's activities; is that correct?
A Yes.

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Q Were you satisfied at the time that the memo was written and you signed it that that was being done?
A Yes.
Q Today, are you satisfied that that was done?
A Yes.
Q Do you have any reason to believe that there wasn't a fire wall between the Office of General Counsel and Inspector General between March 1994 and August of 1994 with regard to Jean Hanson's activities?
A Can you repeat that, please.
Q Sure. You previously stated that you were satisfied at the time that this sufficiently created a fire wall between the two offices. The question now is today, do you see still believe that an effective fire wall was erected between the two offices?
A Yes.
Q Did anyone else contribute to the drafting of 389?

A Not to my knowledge.
MR. PORTNOY: Off the record.
(Discussion off the record.)
(Whereupon, at 12:35 p.m., the deposition was recessed, to be reconvened at 1:25 p.m. this same day.)

AFTERNOON SESSION (1:25 p.m.)
Whereupon,
ROBERT P. CESCA
resumed the stand and, having been previously duly sworn, was examined and testified further as follows:
MR. O'CALLAGHAN: Back on the record.
EXAMINATION (Continued)
BY MR. O'CALLAGHAN:
Q Mr. Cesca, do you remember before we last went off the record I asked you to look at your calendar, the date June 28, and there was a meeting noted there and you didn't recall --
A What the purpose of the meeting was.
Q Right. After June 28, did you have any meetings or communications regarding potential investigation of Treasury/White House contacts?
A After June 28th?
Q Correct.
A Going into July?
Q Yes.
A Yes.
Q When was the next meeting after June 28th?

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A I don't remember specifically when that meeting occurred, but I believe, according to my calendar, I believe it was a meeting with the RTC IG and his staff.

Q I would like to show you a document Bates stamped 495 through 500.

(Exhibit 495 through 500 identified.)

BY MR. O'CALLAGHAN:

Q Have you seen this document before?

A Yes.

Q What is this document?

A This is a page taken from my daily calendar.

Q Is it a page or a series of pages?

A It is a series of pages.

Q Just for the record, I will state it has a cover sheet which states "United States Government appointment book 1994." The first entry begins with the days Thursday, June 30th through July 2nd. And then the next installment is Monday, July 4th through Wednesday, July 6th and Monday, July 11th through Wednesday, July 13th.

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Actually, let's go off the record.

(Discussion off the record.)

MR. O'CALLAGHAN: Back on the record.

BY MR. O'CALLAGHAN:

Q Again, I'm asking you to look at copies of a portions of an appointment book, a weekly calendar Bates stamped 495, 496, 497, 498 and 500. You say this is portions of your calendar?

A That's correct.

Q Referring to the first page, the week ending July 3rd, on Friday, July 1st, there is a notation on the 9:00 time slot. Could you read that for me.

A Yes. "9:00. Hart Building, room 642. Jim and Francine." That's Jim Cottos and Francine Kerner.

Q What does that refer to?

A It refers to a meeting that would have occurred here at the Hart Building.

Q Is that your handwriting?

A No, it is not.

Q Is that a secretary's handwriting?

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A Yes.
Q It refers to you said a meeting that would have occurred in the Hart Building, the Senate Hart Building?
A Right.
Q Did that meeting take place?
A Yes, it did.
Q Who did that meeting involve?
A That meeting involved Jim Cottos, Francine Kerner and myself from the Office of Inspector General and members of the Senate investigative team, Senate investigating team who were looking into the White House/Treasury contacts.
The names of those individuals are -- one was Bob Codinha, and I don't recollect -- there were two other people, and I think one was Mike Adamson. I can't think of his name.
Q If you don't remember --
A I know Bob Codinha was one of the individuals. He was the one who did all of the talking.
Q I would like you to turn to the next page

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of the document. It says "week beginning July 4," and July 5th, there is an entry.
A Right.
Q Could you tell me what that refers to. It looks like it is 10:00, Tuesday, July 5th.
A Right.
MS. VASSAR: Can we first clarify who wrote it?
MR. O'CALLAGHAN: Sure.
BY MR. O'CALLAGHAN:
Q Do you recognize the handwriting there?
A It was probably one of the secretaries. It is not my handwriting. The entry?
Q Correct.
A It says "RTC," which is Resolution Trust Corporation, "Jack Adair, Steve Switzer, Clark Blight, Patricia Black, Jim Cottos and Francine Kerner here." Here meaning the Department of Treasury. And there is a phone number, "703-908-7857," and under that the name "Marge."
Q Before I ask you about the notation above, the 703-908-7857 number, do you know whose number

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that is?
A It is the number for the Office of Inspector General at the Resolution Trust Corporation.
Q Who is Marge?
A Speculation.
MS. VASSAR: Don't speculate.
BY MR. O'CALLAGHAN:
Q Don't speculate if you don't know who that is.
Does that entry refer to a meeting with the RTC Inspector General's office?
A Yes, it does.
Q Do you recall attending that meeting?
A Yes, I do.
Q Are the names listed on the entry here the names of the people that attended the meeting?
A Yes, they are, with the exception of mine.
Q And you attended the meeting?
A Yes, I did.
Q Did anyone else attend the meeting?
A Not to my recollection.

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Q Did anyone else participate by telephone?
A No.
Q What was the substance of discussions of the meeting?
A The substance of the meeting centered around the investigation of the White House/Treasury contacts.
Q Had you been given approval to begin the investigation at this point?
A Yes, we had.
Q When did you receive that? And who did you --
A June 30th. And when you mention approval, a letter came from the independent counsel basically stating that we could proceed with the investigation. That was followed up by a letter to me from Secretary Bentsen in which Secretary Bentsen was requesting our assistance to the Office of Government Ethics.
Q Did you receive requests from any other government entities in early July to begin the investigation?

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A No, I did not.
Q Do you know if any other agencies did?
A I received a letter from Secretary Bentsen. Secretary Bentsen, likewise, sent a letter to the acting director of the Resolution Trust Corporation asking for their assistance in supporting the Office of Government Ethics.
Q In conducting an investigation?
A Yes.
Q And do you recall the specific substance of the discussions that occurred on July 5th?
A I can recall in general terms what we discussed, and what we discussed was the logistics surrounding the investigation, the making up of the teams of investigators, some general discussion in terms of who we needed to interview, the time line by which we could complete our investigation and issue a report.
Q Did you reach a consensus at that meeting?
A I believe we did have a consensus, but there was also some hesitancy in terms of whether or not everything had to kind of come together in order

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for us to meet the Secretary's wishes that the investigation be completed by the start of the hearings. So, there was always some hesitancy in terms of can we complete it within that time frame.
Q Did anyone in particular express concerns or was especially hesitant with regard to that?
A I think there is always -- when you establish time frames around an investigation, investigators will naturally hesitate, because what I have found in my own dealings with investigators, that they are very hesitant about establishing time frames by which they can complete their investigation because they never know where that investigation is going to go.
So, because of the uncertainty in terms of what might happen during the course of the investigation, they hesitate when it comes to having the investigation completed by a certain time frame. Simply, they don't want to be in the position of cutting their investigation short to meet that time frame.
But I will say this, that I instructed the

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investigators that I expected a professional, thorough investigation, even in light of the Secretary's request that we complete this within that time frame, that my concern was that we conduct a professional, thorough investigation.

Q Did you express that view orally?

A Orally.

Q Did you follow up with a written expression of that concern?

A No, I did not.

MR. O'CALLAGHAN: Let's go off the record.

(Discussion off the record.)

MR. O'CALLAGHAN: We are back on the record.

BY MR. O'CALLAGHAN:

Q Mr. Cesca, do you consider yourself to be an investigator?

A No, I do not.

Q How would you characterize your professional standing?

MS. VASSAR: Could you clarify that?

MR. O'CALLAGHAN: Yes.

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BY MR. O'CALLAGHAN:

Q If you were going to classify the type of profession that you are a member of, how would you characterize it?

A My professional background, of course, is auditing. That's the discipline under which I developed in this type of work. However, in my position as a deputy Inspector General, I classify myself more as a manager/executive as opposed to being an auditor.

So, I basically manage the office in terms of establishing expectations and making sure the work gets done and delegating work and that kind of thing and having reporting back.

Q So you are primarily a manager?

A That's correct.

MS. VASSAR: Let's clarify the time period.

BY MR. O'CALLAGHAN:

Q During March through August of 1994.

A Still a manager.

Q And that's where you considered your skills

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to be, as a manager; correct?
A That's correct.
Q After you received the authority or the request from Secretary Bentsen to assist the OGE and to run an investigation into the possible improper contacts between the White House and Treasury, who was put in charge of running and coordinating that investigation?
A Jim Cottos was primarily responsible for coordinating the investigation.
Q And anyone else?
A Well, on the RTC side of it, you had their assistant Inspector General for investigations who worked with Jim.
Q Who is that?
A A fellow by the name of Clark Blight.
Q Who were the primary people at the Treasury Office of Inspector General that were involved in conducting the investigation?
A The names of the investigators?
Q The investigators, anyone who participated in conducting the investigation.

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A Of course, primarily Jim Cottos was responsible for the day-to-day operations of the investigation. The investigators from our office were Dan O'Rourke and Fred Coco.

And then from the Office of Inspector General at the Resolution Trust Corporation, you had, it seems like, Steve Switzer who is the Deputy IG was involved, and Clark Blight as the Assistant IG for investigations. Their investigators, I only remember the name of one, and that was Sarah Herlihy. I don't remember the name of the other investigator.

And then you had the counsels of both, Patricia Black of the Resolution Trust Corporation and then Francine Kerner in our office, who were providing pretty much day-to-day consultation to the investigative teams.

Q Was there anyone in the Office of General Counsel at Treasury that assisted in gathering documents and materials for the investigation?
A Well, there was the original, I think it was something like 6000 documents that were coordinated with Ken Schmalzbach's office that were

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provided to our office for review. But the role that they played had nothing to do with the conduct of our investigation. It was more or less to facilitate getting documents and stuff like that.

Q And how about on the RTC side, do you know who handled that?

A I don't believe that there was anybody other than the Office of Inspector General at the RTC. I think they functioned alone.

Q And was there a contact at the White House that the investigative team worked with in connection with the investigation?

A There were contacts between Francine Kerner and Jane Sherburne.

Q Who is she?

A Jane Sherburne was the -- I don't know what her title was, but she was working for Lloyd Cutler.

Q She was in the White House counsel's office?

A Yes. She was involved in the White House's investigation of this matter.

Q What is your knowledge of the White House's

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investigation of the matter?

A Well, only that Lloyd Cutler was requested by Mack McLarty to conduct a similar investigation.

Q Did you-all coordinate the efforts of the two investigations at all?

A The things we needed to coordinate were basically the scheduling of witnesses and also the delivery of documents, White House documents.

Q Who handled the scheduling of the witnesses on both sides?

A At the White House, that was done between Francine Kerner and Jane Sherburne.

Q How about delivery of documents?

A I think that was handled pretty much the same way.

Q Could you describe the relationship that existed in the conduct of the investigation between the RTC Inspector General's office and the Treasury Department's office of Inspector General?

MS. VASSAR: Was that two questions?

MR. O'CALLAGHAN: Just the relationship between the two Inspector General's offices in

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conducting the investigation.
THE WITNESS: You mean to say, was it a hostile relationship or a cordial relationship?
I think that overall we were each given a responsibility of working together to satisfy a certain objective, and I think that, within that, I think we achieved our objective.
However, in the conduct of the investigation, as you could expect when you have two separate offices, you have multiple investigators, two attorneys, you are going to have controversy in terms of how one views something versus how the other views it. So you are going to have those differences.
What we have always attempted to do was to resolve what those differences are, and sometimes maybe even though a party would go ahead and be satisfied with the final decision or the final resolution, maybe within themselves they felt as though that maybe wasn't appropriate, but they went ahead and did it anyway.
BY MR. O'CALLAGHAN:

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Q With regard to -- bringing your attention back to Bates stamp 497, Tuesday, July 5th. Was that the meeting where you set out the general responsibilities of both offices?
A Right.
Q Was there ever an understanding that one of the agencies would be a lead agency of the investigation?
A I think there was an understanding that we would be the lead agency since the Secretary came to me, since this was an initiative that was established by the Secretary of Treasury, that if somebody were to say well, who is the lead agency, then I would say that we were the lead agency.
But from the standpoint of the conduct of the investigation, I always felt that Jack Adair and I were kind of coequals in the conduct of the investigation, and that's why memos, transmittal letters were signed jointly by Jack and me.
Q Were the different Inspector General's offices given different responsibilities with regard to returning the investigation?

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A No. I don't think that they were given different responsibilities. I think we worked jointly in terms of the conduct of all the interviews.

As a matter of fact, the teams of investigators were made up of one team was an RTC investigator and a Treasury investigator. We had two teams made up of investigators from each of our offices.

Q Was there one agency that managed the documents that were collected and created during the course of the investigation? I'm trying to get a sense of the organization.

A I think basically we probably had that responsibility of collecting the documents. But then the documents were shared as we needed to with the other agency. I think it was coordinated basically between our office and Treasury. Even a step aside, the letter that was sent to Lloyd Cutler, I think that was dated July 1st, requesting their assistance in the conduct of our investigation was signed jointly by me and Jack Adair.

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Q And who contracted for the transcription services for the interviews?

A We did.

Q Was there a specific reason why Treasury entered into a contract for the transcription services?

A I don't think that there was a specific reason on why we contracted for the services. It was a service that we had agreed to, and probably at this meeting, that was essential if we were to complete this investigation within the time frame.

Q Did one agency pay for the transcription services or were the costs shared?

A If we contracted for the services, then we paid for the services. I think we paid for the services.

Q Did you contract for the services, just to be clear? I don't know if you answered that definitively.

A I will say I'm not sure. If speculation is not what we want here, then I will say that I'm not sure.

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Q I wanted to make sure that was clear, because nobody wants speculation on the record.
After the transcripts were completed of the interviews, where were they delivered?
A The reason I hesitate is I was trying to determine whether we got multiple copies in which one copy would have been given to our investigators and another copy would have been given to Francine Kerner. But I know at some point that Francine Kerner would review those transcripts, and I know that she had them in her office. But I'm also aware of the fact that Jim Cottos had transcripts in his office. Now, whether one was a copy of the other or we had multiple copies delivered I'm not sure.
Q Did any one person in the investigation have control over the original copies of the transcripts that were sent over from the transcription services?
A I don't know if that control was exercised in our counsel's office or in our investigative office.
Q Did RTC receive transcripts from the

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transcription services?
A I don't know the answer to that.
Q Were you ever told who the transcripts were sent to by the transcription services?
A Who were they first sent to?
Q After the depositions were done and the transcripts were completed, the transcripts were delivered to somebody.
A I don't know the answer to that. I remember the transcripts showing up, and I know they were available. But in terms of whether or not they went to the office of investigations first or the office of Francine Kerner, I'm not sure what took place first.
Q Do you know whether there was a big time gap between when either one of the offices would receive the transcripts or if they received them in relatively --
A There was no time gaps. We did not have the luxury of time gaps. As soon as the transcripts were available, reviews of those transcripts took place. It was a very dynamic process.

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Q Where did Mr. Cottos keep copies of transcripts that he had?
A I'm sure he would have kept them over in his office.
MS. VASSAR: Do you know?
THE WITNESS: No, I do not.
BY MR. O'CALLAGHAN:
Q Does he have a safe in his office?
A He does have a safe.
Q Did you ever see copies of transcripts in his safe?
A No, I did not.
Q Where did Ms. Kerner keep copies of transcripts that she received?
A She kept them in her office.
Q Do you know where she kept them in her office?
A She had a safe also in her offices. It is a locked office. It is locked at night.
Q Did you have occasion to see transcripts in Ms. Kerner's office?
A Yes, I did.

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Q Did you notice where she typically stored the transcripts?
A Well, when she was there in the office during the day, they were on her desk. And then after she would leave the office -- I never was in her office after she left the office, so I really don't know specifically what she did with them after she left the office.
Q Did you have any document control policies in place during this investigation?
A We did not have a written document control policy.
Q Did you have an unwritten policy?
A I think that it is a policy that we would have followed in the conduct of any investigation.
Q And what was that policy?
A Well, that the sensitive information should be locked up after the individual leaves the office.
Q And how about the transmittal of confidential information gathered in the course of an investigation?
A The transmittal of information? In terms

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of how it is communicated?
Q Distributing it to third parties.
A I don't know the vehicle by which we would have communicated that.
MS. VASSAR: Can we clarify what type of third party?
BY MR. O'CALLAGHAN:
Q Anyone outside of the office of Inspector General at Treasury. Let me clarify. That's a good point.
Transmittal of any confidential information gathered during the course of the investigation to anyone other than office of Inspector General, Resolution Trust Corporation or the Office of Government Ethics, the other parties to the investigation.
A In the communication, it had initially been -- sometimes it would be hand-carried by someone directly to the recipient of the information.
There was no transmittal of information by virtue of mail.
Q I guess my question goes to whether

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employees of the Office of Inspector General or people working with the Office of Inspector General at Treasury in association with the investigation, whether there was a stated policy regarding the appropriateness of disclosing confidential information that was gathered during the course of the investigation.
A There is a policy as it applies to the gathering of any information relating to an investigation, and that is that the information is sensitive, and the appropriate security should be provided that information.
So, whether or not that policy was adhered to, I don't know, because I wasn't there off site kind of viewing it. I know that the information was, for example, on Ms. Kerner's desk during the day. She was there reviewing the information. Now, when she left at night, I can't speak to whether or not she secured that information in a locked cabinet, nor can I speak for Jim Cottos and his office, whether or not he secured that information.
I think I remembered maybe seeing somewhere

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about securing information as if it were kind of in a Grand Jury type environment.

Q I would like to show you an exhibit which is Bates stamped 006272, 006273.

(Exhibit 006272 through 006273 identified.)

BY MR. O'CALLAGHAN:

Q It is a two-page document dated July 6, on the White House stationery. It is addressed to Robert P. Cesca and John J. Adair from Lloyd Cutler.

Have you seen this Exhibit before?

A Well, if it was addressed to me, then I would have seen it at that time.

MS. VASSAR: Can he just have an opportunity first to look through the whole thing? It might help.

MR. O'CALLAGHAN: Sure. Take a moment to review it.

(Witness examined the document.)

BY MR. O'CALLAGHAN:

Q Have you seen document 006272, 73 before?

A Yes.

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Q When did you first see it?

A When it was delivered to our office.

Q What does the document represent?

A It represents a letter addressed to me and also to John Adair, Inspector General, Resolution Trust Corporation. It is a letter signed by Lloyd Cutler, counsel to the President, in which they are providing copies of documents to our office from the White House, and laying out and prescribing some guidance in terms of protections that should be applied to these documents.

Q Did you receive those documents, in fact, referred to in the letter?

A Did I personally receive those documents?

Q The office of Inspector General.

A Yes, we did.

Q I would like to direct your attention to the second full paragraph on the first page. I will read a portion of it and ask you some questions. It reads "as discussed yesterday with Francine Kerner, counsel to the Inspector General, department of the Treasury and Patricia Black, counsel to the Inspector

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General, Resolution Trust Corporation, the White House is providing these documents pursuant to the following agreement: You will make no more than two copies of any one of the enclosed documents."

Did the office of Inspector General comply with this portion of the agreement?

A I don't remember.

Q Do you have any reason to believe that they did?

A No, I do not.

Q Do you have any reason to believe that they did?

A Do I have any reason to believe that they did comply?

Q Correct.

A I have reason to believe that they did comply with that agreement.

Q The next portion reads "these documents (and all copies) will be maintained in a secure location (either the Grand Jury room your investigators are using or a safe in Ms. Kerner's office at the Department of Treasury) with access

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limited to members of your investigative team."

Was this requirement of the agreement complied with?

A To my knowledge, it was.

Q And then on the top of the next page, it reads "you will provide my office with at least two days' advance notice before you show copies of any of these documents to anyone other than a member of your investigative team or a deposition witness."

Did the office of Inspector General Treasury comply with this part of the agreement?

A To my knowledge, we complied with that part of the agreement.

MR. PORTNOY: Could we clarify whether that means that they didn't show them or whether they called the White House.

BY MR. O'CALLAGHAN:

Q The question is did the office of Inspector General/Treasury not comply with that aspect of the agreement at any time.

A We did not violate that aspect of the agreement.

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MS. VASSAR: Can we stop just a second?
MR. O'CALLAGHAN: Let's go off the record.
(Discussion off the record.)
BY MR. O'CALLAGHAN:
Q Do you want to make a statement?
A With respect to that.
Q With respect to what?
A Provision number 3.
Q "You will provide my office with at least two days' advanced notice provision"?
A Yes. Our investigative report has a number of exhibits, and I don't know if any of those exhibits are copies of documents that we had received from the White House.
Q So, the only area of uncertainty you have with whether or not you violated that portion of the agreement would pertain to those exhibits that you just described?
A That's right.
Q Potential exhibits which you just described.
A Which are attached to our final report of

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investigation, that's right.
Q Because you didn't give two days' notice regarding any exhibits you put in the report; is that correct?
A That's correct.
Q With regard to the three provisions of the agreement that were put forth by Mr. Cutler in this July 6 letter, did the RTC -- did the Treasury Inspector General's office enter into any similar agreements with other agencies with regard to document production in this investigation?
A No.
Q So, would it be fair to say that the agreement outlined in this letter is an example of one policy that was used by the Treasury IG's office in handling of documents?
A I would say so, yes.
Q Did you discuss this agreement before this letter was transmitted to you?
A I personally did not.
Q Did anyone in your office?
A I don't know.

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Q Did anyone at the Resolution Trust Corporation Inspector General's office?
A According to the letter, there was mention in the letter that a discussion took place between Francine Kerner and Patricia Black.
MS. VASSAR: Do you have any personal --
THE WITNESS: I have no personal knowledge.
BY MR. O'CALLAGHAN:
Q Were you ever told the discussion took place?
A I don't recall being told.
Q I would like to show you what has been Bates stamped number 366. It is a one-page document that appears to be an E-mail interoffice memorandum, dated 18 July 1994, from Francine Kerner to James Cottos, cc Raisa Cesario and Robert Cesca and the subject is "delivery of transcripts."
(Exhibit 366 identified.)
BY MR. O'CALLAGHAN:
Q Take a moment to review it and I will ask you some questions about the document.

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(Witness examined the document.)
A Okay.
Q Have you ever seen this exhibit before?
A Yes, I have.
Q When did you first see it?
A Probably shortly after it was produced, July 18th, 19th. More than likely July 19th, since it was produced at 6:30 that night.
Q The subject of the message says "subject: delivery of transcripts." What does that refer to?
A That refers to a delivery of transcripts that were taken from witnesses that we interviewed during the conduct of the investigation.
Q Does that refer to redacted or unredacted transcripts?
A These were unredacted transcripts.
Q The first sentence, full paragraph reads "in accordance with our discussion earlier today, I permitted the Office of the Assistant General Counsel for Administration to copy and retain for their use the witness transcripts in my possession."
The first reference "in accordance with our

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discussion earlier today," do you recall that discussion?
A No, I do not.
Q With regard to the "I permitted the Office of the Assistant General Counsel for Administration to copy and retain for use the witness transcripts in my possession," do you remember having a discussion about providing transcripts to the Assistant General Counsel for Administration in or around July 18th?
A I do remember discussions relating to the providing of transcripts.
Q And what were the substance of those discussions?
A Well, I think the substance of the discussions were basically -- they centered around the delivery of the transcripts and the use of the transcripts by the Assistant General Counsel.
Q And what were the uses that were discussed?
A Well, I think that the Office of the Assistant General Counsel had a responsibility for preparing the Secretary for the testimony and needed the information in order to properly prepare the

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Secretary for testifying.
Q And what transcripts were being provided? This might help out. Was there a limitation on what transcripts were sent or were all the transcripts in existence sent over?
A There were transcripts of Treasury witnesses or all the transcripts, I'm not sure.
Q Or even another subset.
A I'm not sure.
Q Were these transcripts requested by the Office of the Assistant General Counsel for Administration?
A Requested as opposed to volunteered by our office?
Q Correct.
A Yes, they were requested.
Q Who requested the transcripts?
A Ken Schmalzbach.
Q And who did he make the request to?
A The request would have come to Francine Kerner.
Q And why would the request be directed to

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Francine Kerner?
A Because Francine was providing liaison between our office and the Office of the Assistant General Counsel.
Q Did Ms. Kerner then consult with you regarding the delivery of transcripts?
A I don't specifically remember the consultation.
Q Do you remember approving providing transcripts to the Office of the Assistant General Counsel for Administration in this general time period?
A If we sent the transcripts to the Office of the Assistant General Counsel, then I would have agreed to that.
Q Who else would have been consulted?
A Probably Jim Cottos.
MS. VASSAR: Are you speculating or do you know?
THE WITNESS: I shouldn't do that. I don't know.
BY MR. O'CALLAGHAN:

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Q You are not sure?
A No. I don't know.
Q Were the transcripts delivered to the Office of Assistant General Counsel for Administration on July 18th?
A I don't know.
Q Were you ever told that they were outside of this E-mail?
A I don't remember.
Q Do you have any reason to believe that they weren't delivered on July 18th?
A No, I don't have any reason to believe they were not.
Q Were you ever told that they weren't?
A No, I was not told. I was not told that they were not.
Q The next paragraph --
MS. VASSAR: Can we clarify one thing?
MR. O'CALLAGHAN: Sure.
MS. VASSAR: When you said you knew about this and discussed it, did you know about it because of the existence of this, or do you recall? By

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"this" I'm referring to number 366.
THE WITNESS: What's hard for me to remember is whether or not we discussed this prior to the E-mail message, we discussed it after the E-mail message. It is possible that this could have been dealt with and I would not have discussed it. I remember the issue, but whether or not it was discussed, when it was discussed, I'm not sure.
BY MR. O'CALLAGHAN:
Q The discussions that took place, what were the contents of the discussion? What were the issues that were raised?
A Since I don't remember the specific discussion, I really don't remember the issues that were raised.
Q I was just trying to see if you had a general recollection of the discussion, if you had a general recollection of any of the issues that were raised. If this refreshes your recollection.
A The Assistant General Counsel had a responsibility for preparing the Secretary for testimony. In order to do that, it is required that

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he have copies of the transcripts. That would have been kind of the general tenor of any discussion I would have had concerning that.
Q Do you know what use these transcripts were put to by the Office of Assistant General Counsel for Administration?
A To prepare the secretary for testifying before the committees, the Congressional committees.
Q Were there any other Treasury officials that were provided access to witness transcripts on July 18th?
A Not to my knowledge, not at that point.
MS. VASSAR: Can we clarify? Do you mean outside of the Office of Inspector General?
MR. O'CALLAGHAN: I was about to follow up.
BY MR. O'CALLAGHAN:
Q Do you know if -- the question was intended to ask whether any transcripts were delivered to any members, any Treasury officials outside of the Office of Inspector General.
A Well, at some point, each of the witnesses

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was given a copy of their own transcripts for verification purposes.

Q Is that what's being referenced in this E-mail or was this a different distribution?

A I don't think that's what is being referenced here. I think that was a different distribution.

Q These were given to Ken Schmalzbach; is that correct?

A Right.

Q Did Mr. Schmalzbach ever relate to you what he did with the transcripts after he received them?

A No, he did not.

Q Did anyone ever tell you they were used by anyone else other than people preparing the Secretary for his testimony?

A No.

MS. VASSAR: At this particular time?

MR. O'CALLAGHAN: At any time.

MR. PORTNOY: Off the record.

(Discussion off the record.)

THE WITNESS: What was the question again?

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BY MR. O'CALLAGHAN:

Q The question was whether you learned whether the transcripts that were given to Mr. Schmalzbach on the 18th of July were used for any other purpose other than preparing the Secretary for testimony?

A Not that I'm aware of.

Q Did you have any concerns about providing Mr. Schmalzbach with copies of the unredacted transcripts on July 18th?

A Well, I think that there were always some normal concerns that you might have.

Q What were those?

A Well, the very concerns about what were they going to be used for, was this the only reason that he was making a request for these transcripts, were they going to be secured. It is just the normal concern that you might have when you release information to somebody else, and particularly since we were still in the process of doing an investigation.

Q And the transcripts included confidential

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information?
A They included information. You could consider that to be confidential information.
Q Were any of the transcripts of RTC witnesses provided to Mr. Schmalzbach?
A I don't know.
Q Was any attempt made to determine what use Mr. Schmalzbach intended to use the transcripts before they were delivered to him?
A I'm not sure.
Q Were any limitations put on the use of the transcripts by Mr. Schmalzbach by anyone in your office before they were delivered to him?
A I'm not sure of that. I'm not sure of the conversations that transpired between our office and Mr. Schmalzbach.
Q Did you instruct anyone in your office to place limitations on use of the transcripts?
A No, I did not.
Q Did you consider doing that at any time?
A No, I did not.
Q What was your relationship with

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Mr. Schmalzbach in July of 1994?
A He was not involved in our investigation, and I was not involved in what he had to do, although there was -- what he had to do in some degree was reliant upon what we were doing. Yet, I did not get involved specifically in terms of what he himself was doing in carrying out his responsibility, nor was he involved directly with me in terms of me carrying out my responsibility.
Q But your responsibilities involved each other?
A Right. A lot of that was done through Francine Kerner.
Q She acted as liaison?
A That's correct.
Q Did you have any personal opinion of Mr. Schmalzbach at the time?
A Personal opinion? I think Ken Schmalzbach is a very professional, very effective attorney, and I think that he does a very difficult job very well. So, my opinion of Mr. Schmalzbach was a man of integrity and a man who carried out his

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responsibilities professionally.
Q Did you ever have any conflicts with him during this time period?
A No, I did not.
Q Did anyone from your office ever advise Mr. Schmalzbach of the confidential nature of the information contained in the transcripts?
A Not that I'm aware of.
Q To your knowledge, was he aware that the transcripts contained confidential information?
A Not to my knowledge.
Q Did you ever have a conversation on confidentiality with him with regard to the transcripts?
A No, I did not.
Q I would like to show you what has been marked as Exhibit 365.
(Exhibit 365 identified.)
BY MR. O'CALLAGHAN:
Q 365 is a one-page document, an interoffice memorandum dated July 18, 1994, 8:33 p.m. from Francine Kerner to James Cottos; Raisa Cesario,

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Robert Cesca cc'd. The subject is McLarty interview, White House. Tell me when you have had a chance to review it.
(Witness examined the document.)
A Okay.
Q Have you seen Exhibit 365 before?
A Since I am cc'd on it, I would say that I had seen it.
Q Do you recall seeing it?
A I don't recall seeing it at this point. But since I'm cc'd on it, I would have seen it at that point.
Q The second paragraph reads "also, Jane Sherburne says she would like to see our transcripts to see whether there are inconsistencies with White House interviews." This says dated July 18th.
Do you know if transcripts were sent over to Jane Sherburne?
A No, they were not.
Q Do you recall being alerted to the fact that Jane Sherburne wanted to see your transcripts in or around July 18th?

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A The alert I would have gotten would have been this memorandum or this E-mail.
Q Did you have any reaction to it?
A I don't recall having a reaction to it.
Q Do you have any reaction to it now?
A Well, it is hard to say in terms of what my reaction is. I understand why Jane Sherburne was asking for the transcripts. My reaction to it is tempered by what has happened as a result of our eventual release of the transcripts.
At that point in time, we did not release the transcripts. I believe there was an exchange of information between Jim Cottos and Francine relating to that request.
Q They dealt with that issue?
A Pardon?
Q Did they deal with that issue?
A I believe they did.
Q Could transcripts have been sent from the OIG's office in Treasury over to the White House without your knowledge?
A Well, that's a possibility.

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Q Have you ever learned that transcripts were sent over without your knowledge at the time?
A No.
Q Have you since, though, learned that transcripts were sent over to the White House without your knowledge?
A No.
Q I have an exhibit marked 035 through 038. I would like you to take a look at that.
(Exhibit 035 through 038 identified.)
BY MR. O'CALLAGHAN:
Q Let me know when you have had a chance to review it. I'm just going to ask you some very general questions about it.
A Do you want me to review the whole thing?
Q I will ask you a question about it. Take a look generally at every page and I will ask you a question about it. If you need to review it further, let me know.
(Witness examined the document.)
I will describe the document while you are reviewing it. It is a four-page document, 035

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through 038. It has, I believe, a fax line across the front which states July 21, '94 from Kinko's Copies, is what it says. The line on it is 301-654-0987. The beginning of the document has a "Bob/Jim" title on it. It looks like a number of edits with different headings, problem, statement, problem, statement.

Have you ever seen this document before?

A I don't remember.

Q Did you ever receive a document that was in this format in late July of 1994?

A I could very well have, Mike. I don't remember, though.

Q Do you recognize the phone number on the top of the page 301-654-0987?

A No, I don't. Again, I can speculate.

Q I would like to show you Exhibit 414.

(Exhibit 414 identified.)

BY MR. O'CALLAGHAN:

Q It is a one-page document dated July 22, 1994. It is addressed to Mr. Stephen D. Potts, signed jointly by John J. Adair and Robert Cesca.

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Have you seen that document before?

A Yes, I have.

Q When did you first see it?

A When it was given to me for signature.

Q Did you participate in the drafting of this letter?

A No, I did not.

Q Who wrote the letter?

A I don't remember who specifically wrote it.

Q Do you agree with the statements made in the letter?

A Yes, I do.

Q Did you agree with them at the time?

A Yes, I did.

Q Was it your understanding that -- reading from the letter now -- "on March 3, 1994, Lloyd Bentsen, Secretary of the Treasury requested the Office of Government Ethics (OGE) to conduct an investigation to determine the ethical propriety of contacts made between officials of Resolution Trust Corporation (RTC), the Treasury Department, and the

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White House with respect to RTC's work on Madison Guaranty Savings & Loan Association."

I would like to have you take a look at what has been marked as Exhibit 457. You can put it next to that one. It is another one-page document. It is a handwritten document.

(Exhibit 457 identified.)

BY MR. O'CALLAGHAN:

Q It is entitled "Potts letter script." It appears to be a draft of a previous document, which was 414.

Do you recognize the writing on that?

A It looks like Jim Cottos's writing.

Q Does this refresh your recollection as to whether Jim Cottos wrote the draft of the letter?

A Only to the extent that this looks like his handwriting.

Q But it doesn't independently refresh your recollection?

A No.

Q I would like to draw your -- were you ever shown draft copies of the letter or just the final?

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A I don't remember if I was shown a draft of it.

Q I would like to direct your attention to the bottom of the page where it reads "your opinion regarding any impropriety should be sent directly to Secretary Bentsen. The report includes unredacted exhibits containing nonpublic information. Therefore the exhibits should not be released." Unfortunately then there is a cutoff in the copy that we received in the document production.

Do you recall seeing a section like this in a draft?

A No, I don't.

Q Take a look at Exhibit 529.

(Exhibit 529 identified.)

BY MR. O'CALLAGHAN:

Q It is a phone message pad. The top message says "Bob 11:20 a.m. Jack Adair." Have you seen that before?

A Well, yes, since it is a message from me, then I would have seen it then.

Q Do you know what phone call that is

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referring to?
A Well, since it is right at the time that we would have issued our draft report, then I would imagine that it was in relationship to that.
Q Do you recall the specific telephone conversation?
A No, I do not.
Q Thanks. That's fine.
I would like to show you Exhibit Number 6877.
(Exhibit 6877 identified.)
BY MR. O'CALLAGHAN:
Q That is a one-page document on Department of Treasury stationery dated July 23, 1994 by hand. It says "Jane Sherburne, Esquire, Office of the White House counsel." It is signed by Stephen J. McHale.
I would like you to take a moment to review it. I will direct you specifically to portions of the letter which I will ask you questions about.
(Witness examined the document.)
A Okay.
Q Have you ever seen Exhibit 6877 before?

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A Yes, I have.
Q When did you first see it?
A I don't remember specifically the date, but it would have been subsequent to July 23.
Q Subsequent to?
A Subsequent to July 23.
Q In the document, the first paragraph reads "enclosed are copies of the transcripts of all but one of the interviews conducted by the Treasury Inspector General as part of his investigation into contacts between Treasury and White House officials concerning Madison Guaranty. We have not yet received the transcript of the interview of Mr. McLarty."
Are the transcripts that are being referred to the depositions that were conducted by your office in connection with the investigation of White House/Treasury contacts?
A That's correct.
Q Were you aware that transcripts were being sent to the White House on July 23rd?
A Yes, I was.

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Q Were transcripts in fact delivered to the White House on July 23rd?
A Yes, they were.
Q How did you come to know that transcripts were delivered to the White House on July 23rd?
A Well, I became aware on Saturday, on July 23rd, that a request had been made from Mr. Cutler that he receive copies of our transcripts.
Q Was it a request for redacted or unredacted transcripts?
A I don't believe the request stipulated whether they would be redacted or unredacted.
Q Which were provided to the White House?
A Unredacted.
Q Who did Mr. Cutler make the request to for the transcripts?
A His request came through the Office of the Secretary.
Q Who at the Office of the Secretary was the request made to?
A I don't know specifically who.
Q Did anyone in the Office of the Secretary

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contact you with respect to this request?
A I had a conversation -- well, I had heard about the request from Francine Kerner.
Q When did she relate that to you?
A That was the early afternoon of July 23rd.
Q And how did she alert you to the request?
A By telephone. We had a telephone conversation in which she mentioned to me that Lloyd Cutler had made this request and was asking when we entered into discussion in terms of whether or not we should comply with the request.
Q Did she say who Lloyd Cutler made the request to?
A She did not specifically say, but she received the -- she received notice of the request from Steve McHale.
Q How did Mr. McHale advise her of the request?
A By telephone.
Q When did that occur?
A That would have occurred sometime prior to 1:00 on Saturday.

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Q Did she relate to you the substance of that conversation, or have you since learned of it?
A No. The only thing I became aware of is that Mr. Cutler had made the request.
Q And what were the substance of your discussions with Ms. Kerner regarding this issue?
A Well, the substance centered around whether or not it was appropriate to release the transcripts.
Q How long was that conversation?
A We were probably on the phone maybe 15, 20 minutes.
Q Did you reach any conclusion?
A Yes.
Q What was the conclusion?
A I concluded that we not release the transcripts.
Q Did you articulate that conclusion to Ms. Kerner?
A Yes, I did.
Q And what was your rationale for coming to that conclusion?

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A Well, it wasn't -- the request itself wasn't a request that I had kind of anticipated.
Q It was not?
A I did not anticipate that request. Although there were discussions previously about transcripts, the actual request itself, I didn't anticipate that that was going to happen, but it did. My concern centered around the fact that that was the essence of what we were investigating.
Q Is that why you didn't expect to get the request?
A That's correct.
Q Were there any other reasons you didn't expect to get the request?
A No.
Q You said there were previous talks about transcripts.
A Early on, there were talks about Jane Sherburne wanting to see copies of our transcripts so that she could compare our records of transcripts with her records of interviews and show any inconsistencies that existed. There had been earlier

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conversations about transcripts.
Q Had that been firmly rejected, that request?
A Yes. Whether it was firmly rejected, I'm not sure. But no, there was no transmission or communication of transcripts at that point in time.
This was the first time that an official request for the transcripts had really come to our office.
Q Had you heard of a request in early July of 1994 made to anyone at the Department of Treasury?
A Not that I'm aware of.
Q Have you ever heard that Mr. Cutler made a request to Secretary Bentsen in or around July 5th for copies of transcripts?
A I'm not aware of that request. July 5th? Well, at that point there were no transcripts.
Q As they were made available.
A I'm not aware that that request had been made. I was in the aware of that.
Q You said you came to the conclusion that the transcripts should not be released because --

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A That's correct.
Q I don't want to paraphrase. Your rationale was?
A My rationale centered around, again, was that an appropriate release of the information and, and the whole issue about communicating that information was the same issue that we were investigating in terms of contacts between the Treasury and the White House.
Q Did you think it would be inappropriate to release the transcripts?
A At that point in time, I did. That's why I decided not to.
Q Were you concerned regarding just the contact or were you concerned about the contents of the transcripts?
A More the contents of the transcripts. I won't say the contents. It was more just the idea of giving them the transcripts from our investigation.
Q You are aware there was confidential information contained in the transcripts; correct?
A I never made the distinction about what was

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confidential, because later on, after we released the transcripts, I learned of some of the information that was in the transcripts that RTC viewed as confidential even though the information had been made public, that they considered that confidential.

To me, it was kind of a -- it was a technical aspect to the information that was in those transcripts that RTC considered confidential, and it wasn't until after the release of the transcripts that I became aware of the confidentiality of this information.

Q So, you had not been advised previously that there was confidential information?

A That's right.

Q Had you reviewed the transcripts previously?

A Not in total.

Q What kind of review had you conducted?

A Just to kind of do a cursory review in terms of line of questioning that had been asked and also in putting together the final report or in putting together the draft report.

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Q Of the 22nd?

A On the 22nd, right. I was involved in discussions with Jim Cottos and Raisa Cesario and Francine Kerner and myself.

As we were going through that process, we would look through sections of the transcripts and then looked at those sections and related it to the actual report of the investigation.

Q Did Ms. Kerner give you her opinion as to whether you should release the transcripts on Saturday afternoon?

A I don't know if she really opined on it or not. When I reached the decision not to, she agreed.

Q You said you spoke for 15 or 20 minutes. What kind of exchange did you have?

A I think it was -- we got on the phone. I don't remember if I called her or if she called me. We got on the phone and she mentioned that Lloyd Cutler had requested copies of the transcripts.

We may have gotten into some discussions in terms of why it was okay and maybe why it wasn't

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okay, and what the perceptions would be if we did release the transcripts. I guess in the final analysis, I just felt uncomfortable at that point in time without further thinking it through. I felt uncomfortable about releasing the transcripts.

Q Did Ms. Kerner express any opinion as to whether she thought you should release it or not?

A I'm sure that she did, and I don't remember what that opinion was. She could very well have said yes, but I don't remember what that opinion would be.

Q Did she communicate to you whether she had spoken with anyone else who had expressed an opinion with regard to the release of the transcripts?

A No, she did not.

Q Let me know if I already asked this. Did she let you know what the contents of her discussion was with Steve McHale?

A The only part I can remember is that Steve McHale had gotten in touch with her to advise her that the request had been made.

Q Was she at home when he called?

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A Yes.

Q Was he at home?

A No. He was in the office.

Q Where was he?

A At main Treasury.

Q Who called Mr. McHale?

A That I don't know.

Q After you finished your conversation with Ms. Kerner early Saturday afternoon, what happened then?

A Well, I spent a good part of the afternoon thinking about that request.

Q Did you consult with anybody?

A No, I did not. I anticipated that I may be asked to reconsider that decision.

Q Yes.

A I went through kind of a mental process that I just -- it caught me by surprise, to begin with. I really hadn't thought this thing all the way through. So, I rethought the decision and some of the factors that I thought about were, one, that we in fact had completed our investigation.

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Q Had a final report been done by OGE?
A No. A final report had not been performed by us. That was an exception to the way we normally operate. The way we normally operate, Mike, is when we do an investigation, we issue the investigation in final form.
However, because we were doing this piece of work for OGE, they were our customer, and in order to allow them the opportunity to look at the transcripts and in light of our report of investigation, I wanted to give them the opportunity to say there are pieces of information in the transcripts that need to be included in your report.
The only way I came up with that we could avail ourselves of that opportunity is to issue them a draft report. If it wasn't for that fact, we would have issued that report in final. I felt that we could avail of that opportunity.
A decision was made to issue the report in draft form. So, from our standpoint, our investigation was completed. We had interviewed everybody with the exception of one, we had

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interviewed everybody. We had sworn statements from everybody. So, from that standpoint, nothing could be done to the transcripts, or nothing would be compromised through the release of these transcripts.
Secondly, I felt that Cutler himself was doing his own investigation at the request of McLarty, and he could have interviewed the same people that we interviewed, and in essence, gotten the very same information that we had gotten, all right.
Third, I felt as though that, if there was a compromise anywhere along the way, that there were enough checks and balances in what had already taken place to uncover any big discrepancies. By checks and balances, I'm talking about the fact that the Independent Counsel had conducted their own investigation. The Senate was in the process of conducting their investigation. We had two Offices of Inspector General doing the investigation. The Office of Government Ethics had copies of all the transcripts. And so they had -- they played a role

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in the investigation, and then there were hearings going on both in the House and the Senate.

So, those are the different things that ran through my mind as it applies to whether or not -- and then there was no -- and then in my way of thinking, there wasn't any information that we surfaced that hadn't already been surfaced in the media. That's when we get into the confidentiality.

Q You mentioned that any compromise that might occur. What are you referring to?

A Say that if we gave the information to Mr. Cutler and information was modified. I really don't know. Or he would have communicated the information to White House witnesses.

Q You thought there were enough checks and balances with all the investigations that had gone on?

A That's right. If something had happened, that the discrepancy would have surfaced through one of these checks and balances, that there would have been inconsistencies there that would have surfaced. Not only that, but the Office of Government Ethics

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already had all that information. From the standpoint of what their responsibilities were regarding the investigation, they had it.

Q Was there any consideration given to the fact that some of the people who were fact witnesses of the investigation were White House officials?

A Well, I was aware of the fact that they were White House officials. But I also looked upon Lloyd Cutler as having the responsibility to doing his own investigation. I almost thought of him in the same context that I would an Inspector General.

If the White House had had an Inspector General in place, that Inspector General would have been asked to conduct the investigation, just like we did. That Inspector General would have been an employee of the White House or an employee of the Treasury Department. If there had been an Inspector General, then there wouldn't be any issue. Inspectors General communicate information back and forth, just like Jack Adair and I did. He is an IG in a separate agency in the Treasury Department.

Q Did you consider the fact of who

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Mr. Cutler's client was at the time?
A I was well aware of who his client was, as well as I was well aware of who my client was. That's why I felt as though that, even in consideration of who his client was, then I factored in these other checks and balances.
So, what happened during that day --
Q This is during the afternoon?
A This is during the afternoon, as I'm doing my various chores. This is an investigation that I lived with for that entire time. So, that afternoon I rethought that decision in anticipation that I may be asked to reconsider the decision.
Q Did you do that?
A No.
Q At any time during the afternoon did you change your mind or reach a different conclusion than you had earlier in the day, if you can identify a time?
A I don't think there was any specific time. But these were factors now I felt as though if I had been given that time to think about the first time as

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opposed to -- my gut reaction is, in investigations, you keep it close to the vest. That's normally our immediate inclination, is not to disclose. You keep it all in tight. But then, after thinking that through and in terms of what Lloyd Cutler, given what he was given the responsibility for and the fact that, if he wanted to, he could have interviewed the RTC people and come on over and interviewed the Treasury people, except that in that 3-1/2-week period of time, we were continually trying to work out schedules so that we could interview those folks. It was tight.
Q Did he interview any people at the White House?
A I think he did.
Q Do you know how many?
A No, I do not know who he interviewed.
Q So, anyway, back to the afternoon of the 23rd, what happened next with regard to the transcripts?
A I normally go to church on Sunday afternoon, 5:00. I got back at 6:00 and I was

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supposed to have dinner with my youngest son. So he came over to my place and said, dad, there was a message from Ed Knight. A fellow by the name of Ed Knight called.

Q What time was this?

A This was around quarter after 6:00.

Q This was after church on Sunday?

A That's right. It was around quarter after 6:00. My son and I were scheduled to go to dinner that night. So, when he came over to my place, he said a fellow by the name of Ed Knight called.

Q Where did the call go to?

A Well -- I live in a different residence than my son does. The call came into my former residence.

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When my kids come home for the summer, they stay at the house.

So, when the call came -- when the call was made that Ed Knight wanted to talk to me, the call went to the house, and it was recorded on the Answer Call.

Q Is that a machine or is it --

A Answer Call is not a machine. It is like part -- it is part of your phone. It is a service that you can order through the phone company.

Q So, the call went to that house?

A That house.

BY MR. O'CALLAGHAN:

Q The call went over to the house and was on the machine or the Answer Call?

A Yes.

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Q What time was the call made to the machine?
A I don't know.
Q What time was it retrieved off the machine or off the answer call?
A That I don't know, either. It had to be prior to 6:00.
Q Why is that?
A Because my son was aware of it and he was coming over to my place. He arrived at my place around 6:15.
Q Did your son retrieve the call off of the Answer Call?
A Yes.
Q How old is he?
A He just turned 20, so back then he was probably around 18.
Q Your son came over around 6:15?
A Right.
Q And told you that you had received a message from Ed Knight.
A Right.
Q Who is Ed Knight?

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A The Executive Secretary.
Q Of Treasury?
A Of Treasury.
Q Did Ed Knight have any role in the investigation?
A Ed Knight -- it wasn't a real extensive role, but any contacts I had with the Office of the Secretary were basically with Ed Knight. Those were mainly informal kind of discussions in terms of he asked me how is the investigation going, I said it is going fine, we are pretty much on target, no substantive discussions with him.
Q Any talk about transcripts or drafts of the report of the investigation with him?
A Not with him, no.
Q So, we are going through your son is coming over at 6:15.
A Right. He told me Ed Knight called. So then I called the department to get in touch with Ed.
Q What number did you call over there?
A I called the secretary -- I'm sorry. I

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called the departmental secretary, the operator, the departmental operator.

Q Okay. That was approximately 6:15?

A 6:15, 6:30, right in that time frame.

Q You made the call. What happened?

A Ed had already left.

Q Who did you speak with over there?

A Well, I initially spoke to the -- it was the telephone operator at the department, and she tried to get in touch with Ed, and Ed had already gone.

At that point I don't remember if she put me in touch with Steve McHale or not, or I called Francine Kerner, but we ended up in a three-way conversation with Francine Kerner, Steve McHale and myself.

Q What was discussed there?

A In that discussion I found out why Ed Knight had called me, and the reason Ed had called me was to express to me the Secretary's desire to release the transcripts to Lloyd Cutler.

Q Did he relate why the Secretary wanted the

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transcripts released to Lloyd Cutler?

A No, didn't give any reason why.

Q How did Steve McHale know that Ed Knight had received the call? Or the request from the Secretary?

A I can only speculate in terms of how he found out.

Q Did you ever learn?

A How Steve McHale found out?

Q Yes.

A Can I go off the record for a second?

Q Absolutely.

(Discussion off the record.)

BY MR. O'CALLAGHAN:

Q Do you know how Steve McHale found out?

A No, I do not.

Q You are on the call with McHale and Kerner?

A Right.

Q How did you get all three on the same line? Did you request to have the other two called up?

A I don't know if it was at my recommendation

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or Steve McHale's or Francine Kerner's. I don't remember how I got from putting a call through to Ed Knight, finding out that Ed Knight had already left, and then whether or not I asked for Steve McHale and the Treasury operator put me through to Steve McHale and he in turn called Francine and we ended up with this three-way conversation, I don't know how that transpired.

We did have that three-way conversation.

Q How long did that conversation last?

A That probably lasted around 15, 20 minutes, 25 minutes. It could have lasted 30 minutes.

Q Between like 6:30 and 7:00?

A Yes, something like that.

Q What was the substance of the discussions that occurred between the three of you?

A Again, we got into the fact that it was now the Secretary's desire to release the transcripts. We got into some of the deliberations that I went through. And then to provide an additional safeguard, Steve McHale -- and I don't remember if he wrote the letter subsequent or had already written

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the letter -- but he developed a letter going to Jane Sherburne, basically laying out the restrictions under which these transcripts were to be used.

Q When did he write that?

A He wrote that that night, because the transcripts were delivered that night.

Q But you discussed the letter in the phone conversation?

A Yes.

Q So you talked about it in a perspective manner?

A Right.

Q Had he already created it when you were talking about it?

A I don't remember if he had already created it and communicated it to me at that point in time. He basically talked in terms of what would be incorporated in the letter.

Q What was your reaction?

A Well, I felt that that in combination with some of my own internal deliberations of that afternoon, then I felt as though that we had the

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necessary safeguards in place to allow the communication of the transcripts to Lloyd Cutler.
Q Were all three of you in agreement on this point?
A Yes.
Q Who made the initial suggestion regarding the language in the letter?
A That was Steve McHale who recommended that a letter like this be produced.
Q So, then was anything else discussed during the conversation?
A No, that was it.
Q What conclusion had you reached by the end of the phone call?
A That it was okay to release the transcripts to Lloyd Cutler.
Q And did you give your okay to anybody at that point?
A I gave my okay at that point.
Q Did you speak with anyone else that night regarding the transcripts?
A No, I did not.

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Q Did you get a call back from Ed Knight at any time that evening?
A No, I did not.
Q What did Steve McHale do after your conversation?
A I think Steve wrote up, finalized the letter. I don't know if he had the letter already drafted out. But he completed the letter, signed it and delivered the transcripts.
Q How did Steve McHale get the transcripts?
A Well, they had copies of the transcripts in their office.
Q When were they first delivered to their office?
A I don't know.
Q Did you ever give explicit approval for delivery of transcripts to their office?
A I never objected to it.
Q Earlier we saw a July 18th E-mail.
A Right.
Q Do you know if transcripts were delivered any time before July 18th?

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A They were not.
Q Are you aware of any other subsequent delivery of transcripts other than July 18th?
A No, I'm not aware of -- if you are talking about subsequent to the 18th?
Q Correct.
A Because as of the 18th, we were still interviewing witnesses.
Q Were transcripts delivered to the General Counsel's office as they became available?
A Starting with the 18th?
Q Yes, correct.
A Yes.
Q Who delivered the transcripts to the General Counsel as they became available?
A That would have been Francine Kerner.
Q You felt confident that enough safeguards had been created through the sending of the letter with the documents?
A Right.
Q So, Mr. McHale had the documents near him in the General Counsel's office; is that correct, the

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transcripts?
A Right.
Q They had their own copies?
A Right.
Q Did he have to request any copies from anyone at Inspector General's office?
A Not to my knowledge.
Q How were the transcripts delivered over to the White House?
A To the best of my knowledge, he delivered them himself.
Q What time did he deliver them?
A I don't know. When we concluded our conversation, the impression I got, he was going to deliver them that night.
Q Did he say who he was going to deliver them to?
A No, he did not.
Q Have you learned who he delivered them to?
A No, I have not.
Q The letter of July 23rd, which is Bates stamped 6877, was delivered to Jane Sherburne. Did

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Mr. McHale indicate or anybody indicate that she was working the night of July 23rd at the White House?
A I don't remember.
Q Did you have any reservations about the delivery of transcripts to the Office of General Counsel previous to the conclusion of the investigation?
A The delivery of the transcripts to the White House?
Q General Counsel of Treasury.
A Delivery of the transcripts to -- did I have any reservations about it?
Q Correct. I know you discussed Mr. Schmalzbach's reasoning for requesting them but whether you had any misgivings about handing over the unredacted transcripts to the General Counsel's office starting on the 18th.
A No, I didn't have any misgivings about it.
Q The reason I ask the question is you also testified that on Saturday the 23rd, one of the reservations you had about giving the transcripts to the White House, because you mentioned that was the

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type of thing you were looking at, and I was wondering if you considered when you handed over the transcripts to the General Counsel's office whether there was a consideration given to the fact that some of the people who were being interviewed and looked at and the conduct you were looking at was contacts made by Treasury officials and whether you had reservation about giving the transcripts to the Office of General Counsel.
A No reservations other than reservations that I would have whenever you provide information. I felt that they would not use those transcripts in an improper manner.
Q Did anyone at the OIG Treasury protest the giving of the transcripts to the Office of General Counsel at any time?
A I don't remember a protest. Maybe they raised the question as it applies to it. But I'm not knowledgeable in terms of whether or not there was a real strong protest.
Q Do you recall who might have raised a question about it?

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A If a question was raised, it would have come out of our investigative office.
Q And from whom?
A Probably Jim Cottos.
Q Did anyone raise objections to the OIG at Treasury regarding the handing over to the White House of transcripts on the 23rd?
A I had not heard an objection about it. I explained the circumstances under which I agreed to do that.
The first real objection that I really heard about it was from RTC to the General Counsel.
Q Had you consulted with them before you turned over the transcripts?
A No, I did not. In hindsight --
Q Should you have consulted with them?
A I should have done that.
Q With regard to handing over the transcripts to the General Counsel, did you consult with RTC before you did that?
A I don't believe we consulted with them. I think they were aware of it.

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Q Who would have been aware of it over there?
A I think the office, whether it was Jack Adair, Pat Black, the investigators. It was no secret that we had done that.
Q I would like to read the beginning of the second paragraph of the July 23rd letter. "As we discussed, these transcripts are being provided to you solely to assist you in the preparation of Mr. Cutler's testimony before the House and Senate Banking Committee hearings. You agreed the transcripts we provided to you with this letter will not be disclosed publicly or shown to individuals, other than to Mr. Cutler, who may be called as witnesses by the committee until such time as we advise you that this restriction is no longer necessary. I'm assuming you agreed not to disclose these transcripts to counsel. Please let me know if our understanding of our agreement is not correct."
Do you know if Mr. McHale was ever notified that the understanding in the agreement was not correct?
A No.

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Q Was this agreement complied to by the White House?
A To the best of my knowledge, it was.
Q Have you ever heard that it wasn't?
A I never heard that it wasn't.
MS. VASSAR: Can we confer for a moment?
MR. O'CALLAGHAN: Let's go off the record.
(Recess.)
BY MR. O'CALLAGHAN:
Q Before we went off the record, Mr. Cesca, we were discussing document 6877 which is before you, the July 23rd letter from Steve McHale to Jane Sherburne. I asked you if you had known that the terms of the agreement that are outlined in that letter had been violated by the White House, and you said no; is that correct?
A That's correct.
Q I would like to show you what I have marked as RC-2, a three-page document regarding a news story pulled from the Associated Press, May 5, 1995.
(Exhibit RC-2 identified.)
BY MR. O'CALLAGHAN:

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Q I would like to draw your attention to the report there that says "Former White House Counsel Lloyd Cutler acknowledged this week that the depositions were used to identify discrepancies in the recollections of Presidential aides before the Congressional hearings. White House lawyers would then 'confront' the aides with information they had obtained from the depositions without revealing the sources, he told the Associated Press. 'If we found inconsistencies, we would go back to the White House officials and go back over testimony they gave us' Cutler explained, 'and then we would say we have heard other reports. I think it was perfectly appropriate to say that this was your testimony to us, there is conflicting testimony, are you sure that's what you said,' Cutler said."
Had you ever heard this report before?
(Witness examined the document.)
A No, I had not.
Q If that is, in fact, what happened, would you consider that to be a violation of the agreement with regard to sharing of transcripts?

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A I would think so. I think our agreement was very specific in terms of what use could be made of the transcripts. It seems this went beyond what our agreement was.

Q Had Secretary Bentsen and Mr. Cutler ever discussed the agreement with regard to sharing of transcripts before July 23rd?

A No.

Q I would like to direct your attention to the second page of the news article, which has a quote from Mr. Bentsen, which is "I also said to him (Cutler) I want to be sure that this is not shared with the witnesses, that this is for your office and your staff, and he assured me that this is the way it would be handled, Bentsen testified."

Had you heard that testimony before?

A I don't recall having heard it. When they say "Bentsen testified," he testified before the committee. I believe that's what it is referring to, that summer's Whitewater hearings. I listened to the testimony and I may have heard it. I don't remember that specific passage. I could have heard it, but I

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don't remember hearing it at this point.

Q You don't have any knowledge of any kind of agreement that was entered into by Secretary Bentsen and Lloyd Cutler?

A No. The only -- not unless the Secretary is referring to this agreement here. What I pointed to was Exhibit 6877.

Q Was Exhibit 6877 shown to anyone else at the Department of Treasury, other than Steve McHale, before it was sent out?

A I'm not aware that it was.

Q Did you seek anyone's approval of the terms of that letter before it was sent out?

A No, I did not.

Q Did Mr. McHale tell you it was his idea to craft an agreement of this nature?

A The impression I got was that it was his recommendation, as we were talking, that we draft that letter, and I felt that that was an additional assurance that the transcripts would only be used for the purposes of preparing Mr. Cutler for his testimony.

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Q Did Mr. McHale tell you that he had discussions with people at the White House about an agreement with regard to how the information would be used in the transcripts?
A I don't remember him discussing that with me.
Q Did you have any thoughts about whether, if the White House didn't agree to the terms, that you wouldn't hand over the transcripts?
A If they did not agree with the terms?
Q Correct.
A No, we did not.
Q Do you know if they ever explicitly agreed to the terms?
A No, I do not.
Q Did Mr. McHale ever relate to you the contents of a discussion he had with Jane Sherburne on July 23rd with regard to any agreement?
A I don't recall.
Q Did you ever learn that Mr. McHale negotiated with Jane Sherburne for the terms of the agreement that are contained in the letter, 6877?

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A My understanding is that that is Steve McHale's writing, that he developed that on his own.
Q Because, in the beginning of the second paragraph, it begins "as we discussed," I was inquiring as to whether you had heard they had discussions.
A I'm not aware of the full extent of their discussions. According to this, they did discuss providing the transcripts. Whether or not they discussed any restrictions as it applies to those transcripts, I'm not aware that that discussion took place.
Q Did Mr. Schmalzbach have any role in the transmittal of the transcripts on July 23rd?
A Not to my knowledge.
Q You didn't have any contact with him?
A No, I did not.
Q You didn't hear he was involved in any way?
A No, I did not.
Q What is Mr. Schmalzbach's professional relationship with regard to Mr. Knight in the hierarchy of the Treasury?

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A At that point in time, Mr. Schmalzbach as the Assistant General Counsel reported to the General Counsel, which was Jean Hanson.

Ed Knight, as Exec Sec, reported to the Secretary. So, Ed Knight does not have supervisory or oversight responsibility regarding Ken Schmalzbach. If Ed Knight is speaking for the Secretary, I'm sure that he could go to Ken Schmalzbach and talk to him about things. But he was not in the supervisory chain for Ken Schmalzbach. He is now.

Q I would like to show you what has been marked as Exhibit -- or a document with Bates stamp 011735, 011736.

(Exhibit 011735 through 011736 identified.)

BY MR. O'CALLAGHAN:

Q Take a moment to review that. "Statement on access to depositions by White House Counsel" is the heading on the first page and then "statement on access to IG transcripts by witnesses."

(Witness examined the document.)

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I'm going to be directing your attention specifically to a portion of the second page. Take your time and read the whole thing if you'd feel more comfortable.

A Okay.

Q Have you ever seen the document Bates stamped 011735, 01136?

A No, I have not.

Q If you haven't seen it, then I don't have any questions on that.

I would like to show you a document Bates stamped 02479 through 02482, a four-page document with a cover page, a fax cover page dated 7/25/94 to Clark Blight from Jim Cottos.

(Exhibit 02479 through 02482 identified.)

BY MR. O'CALLAGHAN:

Q I want you to take a look at that and let me know when you have had a chance to review it.

(Witness examined the document.)

I will probably be asking you some questions regarding the specifics.

A So, you are going to be asking me some

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specific questions regarding the text?
Q I don't intend to. Make sure you are confident you have been able to review it.
A I think --
Q Have you ever seen this document before?
A I have a faint recollection that I might have.
Q On the first page on the fax cover page, the very first -- on the cover page for the fax. It has a big special agent Treasury Department shield on the front.
A Yes.
Q In the comments, special instruction section, the text reads "questions and suggested changes to our report by the Secretary's review team."
A Yes.
Q "Review team to be discussed tomorrow." Do you know what is referred to as "Secretary's review team"?
A I don't know who would have made up his -- I don't know specifically who would have made up that

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review team.
Q Do you know generally what it refers to?
A Yes.
Q What is that?
A It would be the Office of the Assistant General Counsel for Administration.
Q So that's the entire office?
A That would be Steve McHale, Ken Schmalzbach, that group.
Q If your recollection is refreshed at any time about who might have been on that team, at any time during the deposition, just let me know.
A Okay.
Q With regard to the documents attached to the cover page, do you recognize that document, 02480?
A I vaguely remember seeing it.
Q What does that represent?
A Okay. I think what it represents is the draft report that we had issued, that, in looking at the draft report, this review team had some recommendations to us that they felt would contribute

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to our final report.
Q When was the review team provided copies of the draft report?
A It would have been after -- it could have either been July 22nd or shortly thereafter, because I had sent copies of the draft report to OGE and to the Secretary's office, and probably the Secretary's office would have delivered a copy of the report to the General's Counsel people.
Q Did anyone raise any objection to the -- the Office of the Deputy Assistant General Counsel?
A The Assistant General Counsel for Administration.
Q I need to write that down. I will never remember it. When you released copies of the draft report to the Office of the Assistant General Counsel for Administration --
MR. PORTNOY: That's not what he said.
THE WITNESS: I gave a copy of the draft report to Ed Knight.
BY MR. O'CALLAGHAN:
Q What office is Ed Knight with?

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A He is the Executive Secretary.
Q Then did Mr. Knight give the report, in turn, to somebody else?
A I think that's the way it would have gone. He would have sent a copy of it to the Assistant General Counsel.
Q What was the purpose of providing a copy of the report to Mr. Knight?
A Well, we had given a copy of the draft report to the Office of Government Ethics. They were one of our clients. And also the Secretary was our client. So, in the decision to issue the draft report, we felt it was also important to give the Secretary a copy of the draft report so that he could have the opportunity to take a look at what we had included in our draft report.
Q And why was the report, in turn, provided to the Assistant General Counsel for Administration by Mr. Knight?
A Well, because, again, they were responsible for preparing the Secretary for testifying, and if there was ethical wrongdoing, that would have been

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determined by the Office of Government Ethics. It could have been they were the office responsible for assisting the Secretary in determining what kind of administrative action needed to be taken.

Q Did they have any contact with the Office of General Counsel?

A The immediate Office of General Counsel? No, not during this time.

Q Are they under the authority of the Office of General Counsel?

A They are under the authority of the General Counsel. But for the purposes of this investigation, it is my understanding they reported directly to the Office of the Secretary.

Q And how did you come to that understanding?

A It was something that I was informed of.

Q And who informed you of it?

A I don't remember specifically who, except I remember that being mentioned.

Q Have you ever heard that the Assistant General Counsel for Administration's office had any contact with the Office of General Counsel at any

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time during the investigation with regard to transcripts or draft reports?

A Not to my knowledge.

Q What office does Mr. Schmalzbach run at that time?

A The Assistant General Counsel for Administration.

Q So, that was his offices that were receiving transcripts?

A Yes.

Q I would like to show you a document Bates stamped 011803 and ask you if you recognize the handwriting there.

(Exhibit 011803 identified.)

THE WITNESS: If I recognize the handwriting?

BY MR. O'CALLAGHAN:

Q Yes.

A No, I do not.

Q I show you a document Bates stamped 363, a one-page document.

(Exhibit 363 identified.)

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BY MR. O'CALLAGHAN:
Q It appears to be an E-mail, but there is no heading on it or date. The department is counsel. Telephone 202-622-2090, to James Cottos, cc Robert Cesca; subject re: Written questions from Senator Bond, re: Madison. "As we discussed on the phone, I'm not aware of any White House violation of the department's agreement. Sorry if there is any confusion on that point. Francine."
Do you recall seeing this document?
A I don't recall seeing the document, but again, if I am cc'd on it, the chances are that I did.
Q Do you recall being alerted that the White House might have violated the department's agreement?
A No, I am not.
Q When I refer to the agreement, the agreement that was contained in the July 23, 1994 letter Bates stamped 6877.
A Right. I'm not aware that agreement was ever violated.
Q Did anyone ever report to you that it was?

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A No.
Q Other than what might have been reported in the E-mail I just showed you. Take another look at it.
A I did. I'm just looking for a date, because it says written questions from Senator bond regarding Madison. I think that was subsequent to the holding of the hearings.
Q Did you ever hear the agreement was violated at any time was the question?
A No.
Q Take another look at that document 363. Does that indicate to you that that is a heads-up that the agreement was violated by the White House or that there might have been a report of that?
A It seems as though there may have been a reference that there was a violation and it created this confusion. So, I mean, you get the impression that there may have been a violation, and then this -- I guess you had to get what prompted this response.
Q Did you ever have any discussions regarding

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potential violations of the agreement, I guess is what I really want the know.

A I was never aware that there was any violation. I was particularly sensitive about that because of the controversy surrounding the release of the document. Even through the course of the hearings, I was concerned about whether or not anything would surface that would indicate that there was a violation of this particular agreement, and through that entire process, I was never aware.

I was never aware that there was any violation, okay, but there was a lot of discussion in terms of whether or not that was an appropriate release of the documents.

Q Did anyone at RTC ever express displeasure to you about the release of the transcripts to the White House?

A Yes.

Q Who did that?

A That was Ellen Kulka.

Q When did that occur? If it is more than once, let me know.

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A I believe it was July 28th, when we were in the process of going from draft to final report, and Ellen Kulka came into a meeting. We had a meeting with her and members of her staff, along with RTC IG folks and representatives from our office. That's when I became more aware of this idea of confidential information.

Q It was brought to your attention?

A It was brought to my attention in terms of this idea that -- not an idea.

The fact is they were upset over my release of the information because, even though the information had been made public regarding the criminal referrals that had appeared in the press, it had never been confirmed by RTC. By virtue of the fact that this information was included in transcripts of interviews of RTC officials was tantamount to an acknowledgment or a confirmation on the part of RTC officials of these criminal referrals.

Q Was any of the information contained in any other transcripts other than RTC officials?

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A Not that I'm aware of.
Q Okay.
A The whole idea is that even though this information had been out in the press and reported, it was never attributable to an RTC spokesperson. That was the distinction.
Q They never confirmed the accuracy of it?
A That's right. Even though the sources -- basically the sources of the information were other than RTC people, and so it was that distinction that she was drawing on, on the information that was included in those transcripts, and it was because of that that she voiced her displeasure in the release of those transcripts, although I don't know if going to the White House is tantamount to going public.
Q Did you have any discussion with people at RTC about how it came about that the transcripts were delivered to the White House, what happened on the day or evening of July 23rd?
A I don't recollect precisely how it was communicated to RTC IG people that I released this transcript. I don't know if it was a conversation I

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had with Jack Adair, or it was a conversation that Francine would have had with Pat Black, or Jim Cottos with Clark Blight or Steve Switzer. I don't know. It wasn't until after I agreed to release them that they found out.
Q Was Francine Kerner -- she was involved in first alerting you to the fact that you might be receiving a request to turn over the transcripts to the White House on the 23rd; is that correct?
A Right.
Q She also participated in the phone call with Steve McHale --
A That night?
Q -- that night.
A Right.
Q Did she have any contacts with anyone else that evening or that day regarding release of the transcripts?
A Not to my knowledge.
Q Is there any possibility -- let me rephrase that. I want to be careful in how I phrase this question.

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Have you ever related to anybody that you had any conversations with Ed Knight on the evening of July 23rd?

A That I specifically had a conversation with Ed Knight on the evening of the 23rd?

Q Correct.

A No.

Q Did you relate to anybody that you had received a phone message or phone messages from Ed Knight on the 23rd of July 1994?

A Yes, I did.

Q Who did you relate that to?

A Well, whenever -- it would have been a large number of people. I went through this whole episode with my senior staff after it happened to give the benefit of what transpired, because it appeared in the paper that I released it. I felt I owed them the obligation to explain exactly what happened. Then I subsequently did the same thing with all of our managers.

So, in going through that sequence of events, I made mention of the fact that Ed Knight had

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attempted to get in touch with me and we didn't. I would have mentioned the a large number of people, including the IG at RTC and his staff.

Q Including them as well?

A Yes.

Q Did you relate the -- let me ask again. How many phone calls did you relate that you had received from Ed Knight?

A How many times did I tell that story about what happened?

Q How many phone calls did you receive on the 23rd?

A Just that one phone call. That was the one phone call that was sent over to the house where I formerly lived.

Q Who at RTC IG did you relate the story to? You told me who on your senior staff.

A I know I told the story to Jack Adair. If I'm not mistaken, Steve Switzer would have been included in that.

Q How about Clark Blight?

A He could well have been also.

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Q Pat Black?
A Pat. I just felt as though it was important that they understand the rationale behind what took place, okay. I think most of what had been communicated was the fact that the Secretary of the Treasury had requested that we release those transcripts to Lloyd Cutler.
Q Did anyone at RTC IG, or for that matter Treasury IG raise concerns about Francine Kerner's role during the conduct of the investigation into White House/Treasury contacts?
A No, they did not.
Q Do you recall if Pat Black ever had any problems with Francine Kerner's role? Did she ever express them?
A Not to me. Like I said, early on that issue came up. I dealt with that issue and felt it was inappropriate for Francine to be included, and I was never aware that, because of the relationship that Francine had as a member of the Office of General Counsel, that that in any way jeopardized the investigation. Francine was very involved in it.

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She reviewed the transcripts. She suggested lines of questioning that our investigators should pursue. It wasn't as if she was trying to soft-pedal that.
I keep going back that this was a job that we were doing for the Office of Government Ethics and they were the benefactors of our work. They were getting copies of the transcripts as we were getting them.
Q You were working together toward achieving a single goal?
A That's right.
So, if there was an appearance there that somebody was kind of -- that they were undermining the investigation, I think that it would have surfaced.
Q How much contact, daily contact did Ms. Kerner have with the White House during this time period?
A I don't have any idea. The one thing I want to mention is that Ms. Kerner did not participate in the actual interviews.
Q In the taking of the interviews?

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A That's right. She did not participate in that.
Q Those were done by agents?
A That's right.
Q Did Mr. Schmalzbach have any authority over Ms. Kerner?
A No.
Q Do you know what their relationship was during the time period?
A It was more as intermediaries. She was liaison between our respective offices.
Q So, she was liaison with Schmalzbach?
A Right.
Q And did Schmalzbach act as a liaison with General Counsel as well? How did that whole relationship work? I'm talking in reference to the investigation and collection of information.
A Well, Ken Schmalzbach played no role at all in terms of the conduct of our investigation.
Q But he reviewed -- his group reviewed the report?
A That's right. He had a responsibility that

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was distinctive from our responsibility. We were the fact gatherers. We were the investigators. The results of our work were important to what Ken Schmalzbach's responsibility was.
Q Did that include reviewing transcripts and drafting reports?
A That's correct.
Q Please continue.
A Okay. And then I think any need that we had for information was communicated through Francine to Ken Schmalzbach. That is not to say that if we wanted to go directly to Ken Schmalzbach, we could. It was just that we set up individuals who had specific roles and we tried to stay within the bounds of those roles.
Q Who provided documents from Treasury to the White House with regard to the White House's investigation of the contacts? Would that have been Schmalzbach?
A Are you talking about the release of the transcripts?
Q No. I'm talking about the White House

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conducted their own investigation; is that right?
A Right.
Q Did they receive documents from the Treasury?
A I'm not certain about that.
Q If they were to receive documents from the Treasury in connection with an investigation regarding --
A You are talking about Treasury documents?
Q Yes.
A They would have gone through Ken Schmalzbach.
Q Do you know if they did?
A No, I don't.
Q Have you ever heard that the transcripts were delivered to the White House in a "piecemeal" fashion from Treasury to the White House as they became available?
A No. It is my understanding they were all delivered at the same time.
Q Did you ever hear that Mr. Cutler had them or that the White House had the transcripts in their

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possession well in advance of the two to three days that was reported on the 25th?
A I never heard that. Now, when you say transcripts, what I interpret that as means is our transcripts.
Q The unredacted transcripts that were taken in connection with the investigation that the Treasury Office of Inspector General was conducting in conjunction the RTC Inspector General with the purpose of providing analysis with regard to the proper or improper contacts between the White House and Treasury.
A That's correct.
Q That's a mouthful, I understand.
MR. PORTNOY: Off the record.
(Discussion off the record.)
MR. O'CALLAGHAN: Let's go back on the record.
BY MR. O'CALLAGHAN:
Q Mr. Cesca, have you ever heard that any documents -- let me rephrase the question.
Have you ever learned that document

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requests that were made of the Office of Inspector General in relation to any Whitewater investigation were not turned over to the requesting persons?

Let me be more specific. That is kind of a huge, open question.

Have you ever heard, in connection with the document requests from the Independent Counsel's office, that documents were not turned over in connection with that request?

A Well, I know that Congressman Gonzalez had requested unredacted copies of the transcripts, to which Jack Adair responded to Representative Gonzalez indicating that because of the privileges that were being exercised by the counsel at RTC, that we could not make available unredacted copies. However, if Representative Gonzalez was interested, he could send some people over to take a look at the unredacted copies.

Q Did he avail himself of that opportunity?

A No, I don't think he ever did. Because there was so little redacted in the final report that pretty much you could make out what the redacted

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words were. And the whole thing was made public shortly thereafter.

Q Can someone in Treasury's Office of General Counsel send an E-mail to someone in the Treasury Inspector General's office?

A They have that capability to.

Q Was that capability available March through August 1994?

A Sure.

Q And is that true also for the Assistant General Counsel for Administration's office?

A Right.

Q They are all in the same E-mail system?

A There is a different E-mail system. There is an E-mail system we have available in the Office of Inspector General.

Q That is specific to your office?

A Yes. The communication cannot be made through that E-mail system. There is the EIS system, executive information system, through which individuals in the department can communicate back and forth.

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Q That is a larger network of E-mail?
A That's correct.
MR. PORTNOY: Off the record.
(Discussion off the record.)
MR. O'CALLAGHAN: I will stop for a few minutes to review my notes. Let's go off the record.
(Recess.)
MR. O'CALLAGHAN: Back on the record.
Mr. Cesca, at this time I have no further questions. Mr. Portnoy will now ask you a series of questions. If necessary, I will follow up if I feel the need and likewise, but hopefully we will be able to finish in a timely manner.
THE WITNESS: Thank you.
EXAMINATION
BY MR. PORTNOY:
Q I was going to say good afternoon, but I may say good evening.
For the record, although you have probably figured out who I am already, my name is Jim Portnoy. I represent the Democratic Senators on the

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special committee. I will also be asking you some questions, just trying to flesh out some of the matters that have been discussed earlier.
When did you join the Inspector General's office at the Department of Treasury?
A In February of 1984. As I explained, I was up there on detail initially, and that was -- that started in April of 1983, and it was a 120-day detail. At the conclusion of the detail, the Inspector General asked me if I wouldn't apply for the position, and I did and I was selected. So, my selection became official in February of 1984.
Q So, as a practical matter, you have been in the office for about 11 or 12 years?
A That's correct.
Q You have seen a few secretaries come and go?
A Yes, I have.
Q A few presidents.
A Right.
Q Have you ever worked anywhere at the Treasury Department outside -- let me start again.

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Since your joining the Inspector General's office, have you ever worked anywhere at the Treasury Department outside the Inspector General's office?

A No, I never did.

Q You are not a political appointee of any kind, are you, sir?

A No, I am not.

Q The Inspector General's office is an independent office within the Treasury Department?

A That's correct.

Q Could you describe the nature of the relationship between the Inspector General's office and the Treasury Department, in particular the ways the independence of your office are maintained.

MR. O'CALLAGHAN: I will let it go, Jim. I think it was already asked and answered. If you weren't satisfied earlier, please go ahead.

MR. PORTNOY: Off the record.

(Discussion off the record.)

THE WITNESS: The Office of Inspector General, first of all, became statutory in April of 1989. The statute that created the office of

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Inspector General basically established the independence by which the office would function, and organizationally -- I will talk about organizational independence and operational independence.

Organizational independence, the Office of Inspector General, the Inspector General reports to the Secretary and Deputy Secretary, does not report to anybody below that. And also there is a reporting responsibility to the Congress.

We are operationally independent in that no one in the department can tell us basically what we do and how we go about doing it. In addition to that, the legislation allowed us to establish our own personnel office which meant that we bring on the people that we think we need to do our job. We also have our own budget authority. So that means that we have a responsibility for developing, for formulating our budget and for defending that budget at the department, at OMB and in the two houses of Congress.

Q With respect to you personally, sir, when you were the highest ranking official in the office, how was your performance evaluated?

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A I was given an evaluation of exceeds fully successful.
Q I wasn't trying to inquire into your rating. I was inquiring into process. I'm sorry.
Off the record.
(Discussion off the record.)
BY MR. PORTNOY:
Q As a matter of process, sir.
A As a matter of process, my evaluation was agreed to by Ed Knight. In other words, I basically prepared a self-evaluation and submitted it to Ed Knight and he signed it as the rater. There was no other person outside of the Secretary that could evaluate me as the rater.
So, Ed Knight as Exec Sec signed my evaluation form. It is kind of an awkward situation, because I am a career employee, and if there had been an Inspector General on board, then the Inspector General would have been responsible for my evaluation. An Inspector General, I don't believe, gets an evaluation, no formal evaluation.
So, since there was no Inspector General

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and I am a career employee, then somebody had to render my evaluation. Not only that, but I had to, every three years, anybody in the senior executive service has to be -- what's the word?
MS. VASSAR: Recertified.
THE WITNESS: Recertified. You can't be recertified unless you have had an evaluation.
What I ended up doing was preparing my own evaluation, submitting it to Ed Knight and he signed it as the rater.
MR. PORTNOY: Off the record.
(Discussion off the record.)
BY MR. PORTNOY:
Q In the time you have been employed by the Inspector General's office at the Department of Treasury, has anyone from outside that office ever tried to influence your investigation of anything in an improper way?
A Not to influence. You have critics as it applies to your investigation, but nobody that attempted to influence an investigation.
Q Nobody has ever called you in the midst of

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an investigation and suggested that you ought to go harder or ease up?
A Not to my recollection, Jim.
Q Speaking specifically now about Secretary Bentsen, has Secretary Bentsen ever made any effort to influence any of your investigations?
A No, never.
Q Has anybody on Secretary Bentsen's staff ever made an effort to influence your investigation?
A This particular investigation, no.
Q Any investigation.
A The only time, we had a particular sensitive investigation involving a lower level employee who had a lot of influence out in the community, and through that influence, attempted to provide -- because of that influence, it provided interest on the part of some of the staff in terms of what was happening in the investigation. But in terms of telling us that we had to cease the investigation or to try to manipulate the investigation, no.
Q Just to try and get a short answer on the

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record, has anybody on Secretary Bentsen's staff ever tried to influence an investigation?
A No.
Q Mr. Knight?
A No.
Q Has anybody in the Office of General Counsel ever tried to influence an investigation?
A No.
Q Ms. Hanson?
A No.
Q Mr. Schmalzbach?
A No.
Q Mr. McHale?
A No.
Q Nobody at all?
A Nobody.
Q Are those comments equally true with respect to the investigation we are discussing here today?
A That's correct.
Q Nobody has ever in any way threatened your position?

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A No.
Q Nobody has ever offered you any kind of reward for reaching a particular conclusion?
A No. Well, let me explain something to you. We don't reach conclusions in our investigations. We produce the facts. Others arrive at conclusions as it applies to those facts.
Q I believe you testified earlier that your office first became involved in this investigation in early March of 1994.
A That's when the first request came to us to conduct an investigation. However, no investigation ever commenced.
Q Could you remind me, please, how you first became involved.
A First was I received a phone call from Congressman Wolf, asking us if we could conduct an investigation concerning the propriety of contacts between the Treasury and the White House.
MR. O'CALLAGHAN: Excuse me. I am not trying to be argumentative or disruptive, but if the questions have already been asked, it would be

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helpful if we don't duplicate the testimony over and over again. I'm certain this question was already asked and answered very fully.
MR. PORTNOY: I'm --
MR. O'CALLAGHAN: If you have a specific --
MR. PORTNOY: I appreciate your concern, but I will have to pursue this line a little bit.
MR. O'CALLAGHAN: Do you agree with me the question has already been asked and answered?
MR. PORTNOY: I'm afraid I don't agree.
BY MR. PORTNOY:
Q Sir.
A Shortly after the request came in, the Independent Counsel suggested any investigation cease and desist. Those were the words I was looking for, cease and desist.
Concurrent with the request I received from Congressman Wolf, Secretary Bentsen issued a similar request to the Office of Government Ethics to conduct an investigation as to whether or not there was any ethical wrongdoing regarding those contacts.
Fiske issued the letters to cease and

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desist, that means that the start of any investigation was not to proceed. The Office of Government Ethics in response to Secretary Bentsen's request issued a letter back to the Secretary advising the Secretary that they do not perform investigations and that they were going to solicit the assistance of the Inspector General at the Treasury Department, and also the assistance of the Inspector General at the Resolution Trust Corporation, to assist them in fulfilling Secretary Bentsen's request.

At that point we had a meeting with -- shortly thereafter we had a meeting with the representatives from the Office of Government Ethics in which we laid out some kind of general parameters in terms of what would be expected at the point in time when we would be allowed to proceed with the investigation.

Q At that meeting or at that approximate time, did anyone from Secretary Bentsen's office in any way suggest any limits on your investigation?

A Absolutely not.

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Q Did anyone from the Office of Government Ethics suggest any limits?

A No.

Q Was there anyone that you were told not to interview?

A No.

Q Were there any questions you were told not to ask?

A No.

Q Were there any categories of violations that you were told not to investigate within the rubric of your mandate?

A No, there were no categories of violations that we were told not to investigate. The categories were those categories that we should investigate.

Q Within those categories, were there any substantive limitations?

A No.

Q Was there any time limit placed on you initially or were you led to believe that there was any precise time limit when Secretary Bentsen made his initial request for assistance?

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A At that point in time, I don't believe that we had that time limit. We are talking about early March?
Q That's correct.
A Right.
Q So when you first became involved, it was your understanding that you had no time limit on the completion of your investigation?
A I will tell you what causes me a little concern.
MS. VASSAR: Do you want us to talk?
THE WITNESS: Okay.
MS. VASSAR: Could you excuse us just for a second?
MR. PORTNOY: Sure.
MR. O'CALLAGHAN: Sure.
(Witness conferred with counsel.)
THE WITNESS: The answer to your question is no.
BY MR. PORTNOY:
Q There were no time limits imposed?
A Right.

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MR. O'CALLAGHAN: Excuse me. The question was precise time limits; is that correct?
BY MR. PORTNOY:
Q There were no precise time limits?
A Right.
Q Were there any time limits of any kind?
A Not that I recall.
Q I believe you just stated that the investigation was put on hold in deference to the request or preference stated by the Independent Counsel?
A That's correct.
Q Do you know whose idea it was to defer to the Independent Counsel's preferences?
A Well, OGE deferred to the Independent Counsel's preferences, and we likewise deferred to the Independent Counsel's preference.
Q Did anybody in the Department of Treasury or the administration suggest to you that your investigation should be delayed?
A No.
Q Describe for me, please, what you

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considered to be the relationship between your office and the Office of Government Ethics.

A The Office of Government Ethics is responsible for rendering assessments as to whether or not there are violations of ethics. They are not an investigative body.

Our responsibility was to develop the facts --

MR. O'CALLAGHAN: I'm sorry. I'm not trying to be a pain. Are you referencing the time of the investigation or just in general?

BY MR. PORTNOY:

Q At the time of the investigation and in connection with your investigation.

A The Office of Government Ethics was responsible for rendering an assessment as to whether or not there were any violations of standards of ethics. But since they could not conduct an investigation as it applies to the facts surrounding the contacts between Treasury and the White House, they came to us as the fact finders. And it became our responsibility to do the investigation, develop

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the facts and then report to the Office of Government Ethics those facts.

And then taking those facts, it was up to them to analyze the facts and make a determination as to whether or not there were any violations of government ethics.

Q Did you consider the Office of Government Ethics to be essentially your client?

A I considered them to be our client, as I did Secretary Bentsen.

Q What about your relationship with the RTC and their Inspector General's office?

A I considered them to be our co-partners in the conduct of the investigation.

Q To whom did you consider the materials that you developed during the course of your investigation to belong?

A They belonged to our office, to the Office of Inspector General.

Q So, did you view it as your prerogative to make whatever use of those materials that your office saw fit?

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A That's correct.
Q And to dispose of those materials in any way that your office saw fit?
A Just like any regular investigation. We conduct interviews, we take depositions and they all become part of the case file. So, information developed during the course of the investigation becomes part of the case file as it relates to that investigation.
Q Had you ever before conducted an investigation in conjunction with another Inspector General's office?
A I have never been involved in an investigation that included another Office of Inspector General. I will say that I am not aware that we ever conducted an investigation that was as -- not that the investigation was complicated, but with so many parties involved, that this was -- there was no cookbook procedures in terms of how to go about doing this.
(Counsel conferred with the witness.)
MS. VASSAR: Could I just get a

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clarification. Was your question joint investigations with an IG office?
MR. PORTNOY: Yes.
BY MR. PORTNOY:
Q My follow-up, I suspect, addresses your concern.
Have you ever conducted an investigation with another law enforcement agency?
A Can I just jump off the record for a second?
(Witness conferred with counsel.)
MS. VASSAR: I don't mean to do an inquiry, but since I'm pretty new, I don't know.
BY MR. PORTNOY:
Q Have you ever worked with, for example, the FBI?
A Not to my recollection.
Q Or perhaps the Department of Justice?
A Well, there are times when we have had other law enforcement bureaus do investigations for the Office of Inspector General because of our limited resources. But in terms of working joint

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investigations with other law enforcement bureaus where we have worked together, there may be examples, but I can't articulate what those examples might be.

Q Has there ever been another instance in which your office performed an investigation on behalf of another entity, as you did in this instance with the Office of Government Ethics?

A Yes. And that would have been for the Office of Special Counsel, which is part of the Merit System Protection Board.

Q Did you develop any investigative materials during the course of that investigation?

A Of that investigation? If we did the investigation, then we developed investigative materials.

Q Notes, records?

A That's correct.

Q Did you consider those notes and records to be the property of the Treasury Inspector General's office?

A That's correct.

Q And it was your prerogative to retain or

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dispose of those materials?

A That's correct.

Q And to release them or not release them?

A That's correct.

Q I believe you testified earlier that, when you investigate a Treasury Department employee, you generally give your report to someone in that employee's chain of command?

A That's correct.

Q To their supervisor or --

A To the head of the agency. By agency, I mean the agency within the Treasury Department, like the Bureau of Alcohol, Tobacco & Firearms, the Bureau of the Mint, the Bureau of Engraving and Printing.

Q It would be someone within the Treasury Department who is a superior official to that individual?

A That's correct.

Q Who is a superior official to the General Counsel?

A The Deputy Secretary.

Q Who would be a superior official to the

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Deputy Secretary?
A The Secretary.
Q Is there anyone other than the Secretary who is a superior official to everyone who was a subject of your investigation?
A Could you repeat that again?
Q Yes. Thinking back to the investigation that you conducted and thinking back to the individuals whose conduct you investigated, referring to the Treasury Department employees, was there anybody, other than Secretary Bentsen, who was a superior official to all of them?
A No.
Q So, was there anybody other than Secretary Bentsen to whom you could have presented your findings?
A No.
Q Would it be fair to say that your provision of your report to Secretary Bentsen was comparable to the same kind of report you would make to a different official if there were a lower level investigation?
A That's correct.

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MR. O'CALLAGHAN: Just to clarify, whether or not they actually gave the Secretary a report or not in connection with the investigation, whether they gave one to the Secretary.
BY MR. PORTNOY:
Q I believe you testified that on the 22nd of July, a draft report was provided to Secretary Bentsen?
A I provided it to Ed Knight.
Q As the Executive Secretary and representative of Secretary Bentsen?
A Yes.
Q Was providing it to Mr. Knight the same as providing it to Secretary Bentsen?
A Yes.
Q Was providing the draft report to Mr. Knight comparable to a report to the superior official as you would normally do?
A That's correct.
Q Was Secretary Bentsen the action official who would have had to take personnel steps if the investigation called for it?

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A Yes, that's correct.
Q So, in your estimation, did Secretary Bentsen have a managerial need for the information that you provided him?
A Yes, he did.
Q At the time, did you see anything improper or inappropriate about providing a copy of your draft report to Secretary Bentsen?
A No, I did not.
Q At the current time, do you see anything improper?
A No, I do not.
Q Would you say the reverse, that it was proper?
A I would say it was proper. It was proper to provide him with that report. Again, I want to make much of the fact that issuing a draft report is not a common practice, but because of the special situation here, issuing a draft report was proper, and it was proper to issue a copy of that to Secretary Bentsen.
Q I believe you stated earlier that you have

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a statutory obligation to report to the Secretary?
A Well, the statute does provide for us to report to the Secretary.
Q Did you view your provision of the report to Secretary Bentsen as consistent with your reporting obligation?
A I think it is consistent with our reporting obligation. I think it is consistent with the way we as an office conduct business. Even if it wasn't for the statute, that in the operations of an Office of Inspector General, that if there is an allegation of wrongdoing on the part of that senior official and that senior official reports directly to the Secretary, then the Secretary would be the recipient of our report.
Q Would your view be affected in any way by the fact that Secretary Bentsen is the one who first requested an inquiry into this conduct?
A No. I think his request is wholly appropriate, as a matter of fact.
Q Would the fact that he requested the inquiry strengthen your view that he ought to be

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provided with a copy of the report?
A That's correct. Absolutely.
Q You stated during your testimony that there is one employee of the Office of Inspector General who has a foot in two worlds, if you would.
A Right.
Q The counsel to the Inspector General.
A That's correct.
Q And you stated that in some formal way, the Counsel to the Inspector General is attached to the Office of General Counsel?
A That's correct.
Q Does the counsel to the Inspector General have any clients other than the Office of Inspector General?
A No.
Q Does she have any professional obligations of any kind to anyone other than the Office of Inspector General?
A Professional obligations in terms of providing legal services?
Q That's correct.

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A No.
Q At the time of the investigation, the counsel to the Inspector General was Ms. Kerner; is that correct?
A That's correct.
Q How long had you worked with Ms. Kerner at the time?
A I worked with Ms. Kerner ever since she arrived in the Office of Inspector General, and I'm trying to back up from January '93. Probably sometime in '92 or '91 she would have joined our office. So, it would have been a couple of -- about 2-1/2 years, I would say.
Q Were you in a supervisory position with respect to Ms. Kerner?
A I wouldn't necessarily consider it a supervisory position. That position provides legal services to us. The Office of Inspector General does contribute, provide input to her, to the evaluation of the individual occupying that position.
The office does, in many respects, provide the work that is referred to that office. I guess

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you could, in some way, say that we do provide supervision, but in terms of supervising the technical aspects of that job, we do not. We are not lawyers.

Q Let me rephrase that a little bit. Have you been -- from the time Ms. Kerner joined the Inspector General's office to the time the investigation was completed, were you deputy Inspector General?

A Yes.

Q So, you were one of the seniormost officials in the Inspector General's office?

A That's correct.

Q You were one of the officials to whom Ms. Kerner was supposed to provide legal services?

A Exactly.

Q Were you satisfied with Ms. Kerner's legal services?

A Yes, I was.

Q Was it your view that she was vigorous in preserving the independence of your office?

A Yes, very much so.

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Q Was it your view that she was vigorous in preserving the integrity of your office?

A Yes.

Q Was there ever an occasion in which you perceived Ms. Kerner to have some kind of divided loyalty?

A No.

Q Do you have any concern that the formality of her employment by the Office of General Counsel affected the legal judgments she was making?

A No.

Q Or the advice she was providing to you?

A No.

Q With respect specifically to the investigation under discussion here, do you have any concern that at any time Ms. Kerner acted out of divided loyalties?

A No, I do not.

MR. O'CALLAGHAN: Can you be more specific, Jim?

MR. PORTNOY: Certainly.

BY MR. PORTNOY:

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Q Do you have any concern that the fact that Ms. Kerner was employed in some formal way by the Office of General Counsel affected her legal judgment?
A No, it did not.
Q Do you have any concern at any time the fact that Ms. Kerner was employed by the Office of General Counsel affected her participation in your investigation?
A No, it did not.
Q Did there ever come a time during the investigation that you had any question about Ms. Kerner's professionalism?
A No.
Q Or her integrity?
A No.
Q Has anything you have learned since the investigation was completed altered your judgment in any way?
A No.
Q I would like the record to reflect I'm showing the witness a document stamped two different

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numbers --
A The same document?
Q -- one of them being 6890 and the other being 0156179.
(Exhibit 6890 identified.)
BY MR. PORTNOY:
Q It is a memorandum from Mr. Cesca to Jean Hanson dated June 27, 1994.
I believe you testified you are familiar with this document?
A Right.
Q Would you state again your recollection of why this document was prepared.
A It was prepared basically to create a record that would basically separate or remove Francine Kerner from any supervision at all from the General Counsel. It was basically to establish a fire wall between Ms. Kerner and the General Counsel and that, during the period of this investigation, that I would be responsible for Ms. Kerner's performance.
Q Did you have any concern about Ms. Kerner's

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performance prior to the issuance of this memorandum?
A No, I did not.
Q Did you have any concern following the issuance of this memorandum?
A No.
Q Do you recall who might have expressed concern?
A I don't recall specifically. There was a concern expressed, and I dealt with the concern and concluded that Ms. Kerner would be -- Ms. Kerner's involvement in the investigation would be appropriate.
Q Did anybody express any concern to you after the issuance of this memorandum?
A I don't remember the timing of that. I don't know if the concern was expressed prior to the issuance of the memo or subsequent to the issuance of the memo. But I do remember having to deal with that particular issue.
Q I would like to show you a document marked 444, which I believe Mr. O'Callaghan showed you previously, which are notes dated June 22, 1994 of a

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staff meeting. And I would draw your attention to the highlighted portion in brackets, and in addition, the highlighted portion in the margin in brackets.
MR. O'CALLAGHAN: Can you identify that for the record?
BY MR. PORTNOY:
Q Read the larger portion first.
A Sure. It says "expressed concern over Francine's reporting chain. Memo drafted by Francine to Dennis Foreman."
Q And the notation in the left margin?
A It says "call RTC."
Q Are both of those portions of the memorandum bracketed, meaning is there a bracket around them or parentheses?
A I don't see -- that is E. This bracket applies to Nussbaum in Italy.
Q It doesn't matter. It doesn't matter.
Let me ask you if the notation "call RTC" next to the discussion of the concern about Ms. Kerner refreshes your recollection in any way as to who might have been the source of concern about

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her role?
A Well, this note was written by Jim Cottos. It was at a staff meeting. Francine was reporting out to the staff. These are Jim Cottos's notes as it applies to Francine reporting out.
Where it says "expressed concern over Francine's reporting chain," I don't know if that was a concern expressed by Francine that Cottos had written up or if that is a note he wrote in which he expressed concern.
MR. O'CALLAGHAN: I think it is kind of tough to ask the witness to state the mind of the author of a note he hasn't seen before.
BY MR. PORTNOY:
Q I was asking whether the note "call RTC" next to this matter sparked a recollection.
A I do have a recollection that the concern was expressed, and I dealt with the concern.
Q And it was resolved to your satisfaction?
A That's correct.
Q And to this day, you are satisfied that it was properly resolved?

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A Oh, absolutely.
Q Was it Ms. Kerner's role in your office to serve as a liaison to the Office of General Counsel?
A That was one of the roles that she carried out, was to act as liaison between our office and the Office of the Assistant General Counsel for Administration.
Q Was that part of her normal duties?
A I wouldn't say that it was part of her normal duties. But there is a lot of exchange between the counsel to the IG and that particular office. A lot of it deals -- because of the work that we do in conduct investigations, and sometimes that office gets involved in making determinations as to the appropriate administrative sanctions to be taken. So, there is communication frequently between that office and it involves the administration and a lot of what we do is that side of the operation.
Q Is it fair to say Ms. Kerner's role as liaison between the Inspector General's office and that portion of the Office of General Counsel was not unique to this investigation?

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A I wouldn't say that it is unique. There is a relationship that exists there between our office. It is just by virtue of the fact of what our respective responsibilities are.
Q So, there would have been other matters in which Ms. Kerner would have had contact with that office?
A That's correct.
Q And that never raised any concern?
A No.
Q I believe you stated during your earlier testimony that Mr. Schmalzbach's office at the Office of General Counsel was essentially in some respect an autonomous entity. Could you describe that a little further.
A I think I said that in reference to this investigation; that, for the purposes of this investigation, Mr. Schmalzbach was reporting directly to the Office of the Secretary, that his office as it applies to this investigation was not under the supervision of the General Counsel.
Q Why do you think that was the case?

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A Well, I think because of the sensitive nature of the investigation and the role that Mr. Schmalzbach's office -- the role that he was responsible for carrying out in terms of preparing the Secretary for the hearing, and then potentially, the role that he would have to play in terms of any administrative action the Secretary might have to take relating to those senior officials, if the OGE had found that there was ethical wrongdoing.
Q Would it be fair to say that one of the reasons that the office of administration was reporting directly to the Secretary was because higher ups in the Office of General Counsel were implicated in the investigation?
A That's correct.
Q Would you characterize this as an effort to build a second fire wall within the department?
A That's correct, that's correct.
Q Are you aware of any other fire walls or similar kinds of provisions?
A No, not during the conduct of this investigation. There may have been others at other

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times, but not during this investigation.
Q Are you aware specifically of any other examples?
A I can't recollect right offhand whether or not there have been others.
Q I believe you also testified that you coordinated with the Office of General Counsel in some fashion in light of Secretary Bentsen's testimony to Congress.
A I am referring to -- the coordination was with the Assistant General Counsel for Administration, Ken Schmalzbach's office, and given the responsibility of that office to prepare the Secretary for the hearings, the work that we were doing was coordinated to that office.
Q You had a meeting with people from that office, I believe you said?
A Correct.
Q When was that, do you recall?
A Was that late May? I think it was like May 23rd. There was an E-mail message from Francine Kerner in which she mentioned a meeting that I was

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involved in with Ken Schmalzbach. As a matter of fact, there it is.
Q Was it the responsibility of the office of administration to assist Secretary Bentsen in preparing for his testimony?
A I think it depends on what the nature of the testimony is.
Q In this instance.
A In this instance, yes.
Q Would you view it as appropriate for that office to try to collect all possible information for Secretary Bentsen?
A I would say so.
Q Would you view it as in fact an obligation of somebody preparing the Secretary for testimony?
A I think it is part of their responsibility. And I think that their obligation is built within the responsibility. I think if you have the responsibility for doing it, then you have the obligation for carrying out that responsibility.
Q Secretary Bentsen's testimony encompassed in part matters that were pertinent to your

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investigation, did it not?
A Yes, it did.
Q So, would you view it as appropriate for Mr. Schmalzbach, and I believe you testified that Mr. McHale also participated, to seek information regarding your investigation in order to prepare Secretary Bentsen?
A Right, right.
Q Do you have any reason to believe that either Mr. Schmalzbach or Mr. McHale or anyone else from that office was seeking information from you for any reason other than to prepare Secretary Bentsen's testimony?
A No. With one exception, and that was if they were going to have to be involved in the determination of the appropriate administrative action. But I think that, in terms of what their immediate charge was, it was to prepare the Secretary for testifying.
Q Did you ever have any reason to believe that either Mr. Schmalzbach or Mr. McHale or anybody in that office was seeking, through contacts with you

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or anyone in your office, to influence your investigation in any way?
A No.
Q Or to limit your investigation in any way?
A No.
Q Or to direct you to a particular conclusion to the extent that you reached conclusions?
A No.
Q You also testified that you knew that Secretary Bentsen wanted your report prior to his testimony.
A Right.
Q Did anybody ever direct you to provide a report in a given time?
A Well, Secretary Bentsen's interest in having us deliver that report, completing our investigation prior to the hearings is documented in his request to me.
Q I would like the record to reflect I'm showing Mr. Cesca a document numbered 6883. It is a memorandum to Mr. Cesca from Secretary Bentsen, entitled "Investigation of White House/Treasury

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contacts concerning Madison Guaranty Savings & Loan Association," and it is dated June 30 of 1994.

I would ask you to look at the document I have just shown you, Mr. Cesca. Is that the memorandum that Secretary Bentsen sent to you asking you to re-initiate your investigation?

A That's correct.

MR. O'CALLAGHAN: I don't mean to interrupt, but I don't know if it was ever established that an investigation was ever initiated prior to that time.

BY MR. PORTNOY:

Q Is this the document Secretary Bentsen sent you urging you to initiate an investigation following the completion of the Independent Counsel's investigation?

A Right, that's correct.

Q I would ask you to look at the last sentence --

A Yes.

Q -- and read that into the record, please.

A "I would greatly appreciate it if you would

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take whatever actions are necessary to ensure that the director receives your report in sufficient time to provide me with his views and advice prior to the Congressional committee hearings on this matter."

Q Does director refer to the director of the Office of Government Ethics?

A That's correct.

Q Would you characterize that as urging you to complete your report quickly?

A I would say that it is strongly urging us to complete our report.

Q But it is not a directive, is it?

A Well, receiving that request from Secretary Bentsen, it was our intention to see if we couldn't comply with that request.

Q But it was your decision, was it not, how long your investigation would take?

A That's right. As I testified earlier, it was my interest to conduct a professional and thorough investigation. And if it looked as though we could not satisfy that, then I had a responsibility to go back to Secretary Bentsen and to

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inform him that we could not comply with that request.

Q And you could have done that at any time prior to the issuance of your report, could you not?

A That's correct. As a matter of fact, there was a point in time when I almost did it.

Q You indicated earlier that White House Chief of Staff McLarty had asked Special Counsel Cutler to conduct an investigation.

A That's correct.

Q Do you recall how you learned that?

A I don't recall specifically how I learned that.

Q Do you recall when you first learned it?

A Well, I learned it very early on. Now, it could have been prior to the initiation of our investigation, or it could have been even prior to that in terms of when Chief of Staff McLarty asked Lloyd Cutler to conduct an investigation. Early on there were some discussions with respect to Jane Sherburne and our office. We became aware that Mr. Cutler was asked to conduct an investigation.

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Q What were the nature of those discussions regarding Ms. Sherburne in your office?

A Well, the discussions with Ms. Sherburne, she was the person that was our liaison coming from the White House, and she was the one that basically assisted in providing us with documents and helping us set up interviews of White House witnesses. She was also the one that handled the subject of exchanging our records of interviews with them so that they could identify discrepancies between their records of interview and our records of interview. And if there were any discrepancies, then there would maybe be a need to follow-up.

So, there was that. Jane Sherburne was the one who was primarily in contact with our office.

Q Do you recall when those conversations might have occurred?

A Well, probably they occurred starting from the beginning of the investigation up to about midway through the investigation; maybe the first week, week and a half, two weeks.

About the second week into the

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investigation, that's when we were starting to prepare the -- starting to schedule the White House witnesses for interview. So, to me, the subject of the transcripts came early on. It was decided on and then it didn't come up again.

Q Was the White House cooperative in scheduling interviews?

A Once the White House received our letter, it was a letter dated July 1, signed by Mr. Adair and myself, then there was never any problem in terms of scheduling.

The problem dealt more with whether or not the witnesses would be available for interviews because, at that same time, I think it was the G7 meetings were occurring over in Italy, and some of the White House witnesses were still in Italy and they were starting to drift back into the United States. So, we were trying to line them up for interviews as soon as they got back.

Q I would like to direct your attention to a letter Bates stamped 015592, which is dated July 1 of 1994 and is a letter from Mr. Adair, actually signed

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by Steven Switzer and you, to Lloyd Cutler.

(Exhibit 015592 identified.)

BY MR. PORTNOY:

Q Is that the letter to the White House you were referring to?

A That's correct.

Q Is it your testimony that, following this letter to the White House, the White House complied with your requests to investigate and speak with White House witnesses?

A That's correct. After they received this letter, there was never any problem in terms of getting them scheduled for interview.

Q There were occasional scheduling conflicts?

A Yes. You can expect that. We made ourselves available, which meant weekends, nights. Whenever they were available, we made ourselves available.

Q Would you say that the White House, in any way, put up road blocks to your investigation?

A No.

Q Would you say that the Treasury Department

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was cooperative in scheduling witnesses?
A Yes.
Q And providing documents?
A Right.
Q I didn't actually ask you. Was the White House cooperative in providing documents?
A Yes.
Q Was the RTC cooperative in providing witnesses?
A Yes.
Q And in providing documents?
A Yes.
Q Do you recall any incident with respect to any of those three entities where there was someone you wanted to contact or interview that you were blocked from contacting?
A No.
Q Do you recall any incidents with any of those three entities where there were any materials you needed or wanted and were denied?
A No.
Q Turning back to the White House

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investigation, I believe you testified earlier that you viewed Mr. Cutler's efforts as comparable to those of an Inspector General?
A That's correct.
Q Does the White House have an Inspector General?
A No, they do not.
Q Is it the normal course for agencies to seek to conduct internal investigations when there are allegations of wrongdoing?
A Could you repeat that again.
Q Sure. Maybe I could make it more articulate.
A You have to repeat the question. I was anticipating a different question than you were asking.
Q Is it normal practice for agencies of the government to initiate internal investigations when they become aware of allegations of wrongdoing by their employees?
A Yes.
Q Is there any agency or official within the

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White House who is, to your knowledge, legally designated to conduct those kinds of investigations?

A Legally designated? I don't believe so, no.

Q So, it would be essentially an ad hoc process in the White House?

A That's correct.

Q In your view, would Mr. Cutler, as White House Counsel, have been a logical person to conduct the investigation?

A Yes.

Q In your view, would he have been an appropriate person to conduct the investigation?

A I think it would have been appropriate because Mr. Cutler was brought into the White House on an interim basis between the time that Mr. Nussbaum left the White House and then a new General Counsel was brought in. And if you recollect, he was brought in because of his reputation as being an individual of extremely high integrity.

So, he wasn't there for the long term. He

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was there, I think, to cover a period of time. And of probably all of the individuals, I think he did not have the same allegiances to the President as probably a lot of the other White House officials.

Plus, I also think as part of that office, there is an ethical responsibility as it applies to the ethics arena in government that also falls within the purview of the counsel.

Q Are you aware that the designated agency ethics official in the White House is an Associate Counsel to the President?

A I think that is probably correct.

Q Or at least at the time was.

A I'm not sure of that. But I know that there is a connection between that office and ethics.

Q So, you didn't see any problem with the White House conducting an internal investigation?

A No.

Q And you didn't see any problem with Mr. Cutler heading up that investigation with the White House?

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A No, I did not.
Q Did you see any problem with Ms. Sherburne participating in that investigation?
A I didn't have any problem with Ms. Sherburne participating in it.
Q In light of the views you just expressed about the White House investigation, was it your view that your agency should cooperate with the White House investigation?
A During the conduct of the investigation, I never saw us as having a need to cooperate with them, because I really didn't have a full appreciation of what the scope of their -- it was after I deliberated on it that I concluded that it was appropriate for us to assist them.
Q If you became aware that an agency other than the White House, an agency with an Inspector General's office was engaged in an investigation, would you normally cooperate with that investigation?
A Yes.
Q And did you view your relationship with Mr. Cutler as similar?

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A I viewed it that way, although some of my former colleagues didn't view it that way.
Q Did you know at the time that they had a different view?
A No, I did not.
Q So, when did you first learn that your colleagues didn't view Mr. Cutler as comparable to an Inspector General?
A It is not that they -- when I talk about colleagues, I am talking about former Inspectors General that were asked as to whether or not they thought it was appropriate to release the documents. And basically they went public with the fact that they felt it was inappropriate.
Q But at the time nobody expressed that view to you?
A No, not at the time. Maybe some people had reservations. But by the time it became known that I released it, the decision had already been made.
Q I would like you to look at a document, Bates stamp numbers 10840 and 10841, which is a letter from Mr. Cutler, I believe initialed by Jane

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Sherburne, to you and Mr. Adair, dated July 6, 1994.
Would you just describe for the record in general terms the subject of that letter.
A Yes. It looks like it is the cover letter associated with information that was being provided to our office by White House Counsel.
MR. O'CALLAGHAN: For the record, it has already been shown to the witness earlier in the deposition and identified.
BY MR. PORTNOY:
Q Yes. This is the same letter that Mr. O'Callaghan showed you, but as to which I think there are some additional pertinent questions.
A Okay.
Q You don't remember seeing this letter here prior to this deposition?
A The letter was addressed to me, and the chances are that I did see it. But if you would have asked me whether or not I would have gotten this letter before this deposition, I would have had to think long and hard about whether or not I had.
But since it was addressed to me, then I

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would say that I probably saw that at the time that we received it.
Q Would it be fair to say that the letter is a cover letter transmitting documents from the White House to you and Mr. Adair?
A I would say so.
Q Would it be fair to say that the letter imposes some limitations on your use of the documents?
A I think that it does impose some limitations.
Q Or at least some conditions.
A Conditions.
Q I would like you to look at the provisions that appear to condition the receipt of the document, and tell me whether in your view any of those conditions in any way impeded your ability to conduct your investigation.
A No, they did not impede our ability.
Q Turning in particular to the third condition which I believe is highlighted.
A Yes.

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Q Could you just summarize that or read it, as you prefer?
A "You will provide my office with at least two days' advance notice before you show copies of any of these documents to anyone other than a member of your investigative team or a deposition witness."
Q I believe Mr. O'Callaghan asked you about that condition. Did your office ever show White House documents to a third party other than an investigator?
A To my knowledge, we did not. If you are talking about other than the individuals mentioned here, and I think as I mentioned in my earlier testimony, we have exhibits that are appended to our report of investigation, and these are exhibits which are reflective of documents. But I don't know if any of those exhibits apply to the documents we received from the White House.
Q But you didn't seek permission from the White House?
A To my knowledge, we did not have to provide them with any advanced notice.

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Q Let me make this perfectly clear.
A Sure.
Q I believe you stated earlier that you never violated this provision. Did you ever comply with it?
MR. O'CALLAGHAN: I don't think that was the testimony, Jim. To be clear, he testified -- and correct me if I'm wrong -- you testified that at first you didn't think you violated it, and then you testified that you had attached exhibits to the report.
THE WITNESS: Right.
MR. O'CALLAGHAN: And that you hadn't notified the White House two days in advance; is that correct?
THE WITNESS: Right. I don't know if the exhibits that we have in the report are reflective of information that we secured from the White House.
BY MR. PORTNOY:
Q I do understand the testimony correctly then. My question to you is whether you ever complied with that provision. Did you ever notify

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the White House at any time before showing any documents to anyone?
A No.
Q Other than the exhibits to your report, did you ever have any reason to show copies of any of the White House documents to anyone other than a member of your investigative team or a deposition witness?
A Not that I can think of.
Q Would it be fair to say that the conditions delineated in this letter had no effect on your investigation?
A It did not.
Can I take a break?
MR. O'CALLAGHAN: Sure.
(Recess.)
BY MR. PORTNOY:
Q I show you a document numbered 366. It is an E-mail from Francine Kerner to Jim Cottos, copying Raisa Cesario and you. It is dated July 18, 1994.
Look at the first highlighted portion.
A Yes.
Q For the sake of future readers, if there

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are any, read that into the record.
A "In accordance with our discussion earlier today, I permitted the Office of Assistant General Counsel for Administration to copy and retain for their use the witness transcripts in my possession."
Q Just to be clear, to whom does the word "discussion" refer?
A To Jim Cottos, and I don't know if it refers to me or not. But it certainly refers to between the "from," who is Francine Kerner and the "to," who is Jim Cottos.
Q Based on that document, do you have any independent recollection of this matter?
A No, I don't.
Q Based on that document --
MR. O'CALLAGHAN: For clarity, this matter, are you referring to the discussion or the content of the E-mail?
MR. PORTNOY: Either.
MR. O'CALLAGHAN: Why don't we do it one at a time.
THE WITNESS: I don't have any recollection

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of the discussion.
BY MR. PORTNOY:
Q Let's leave that for the moment. You have no recollection that Ms. Kerner or Mr. Cottos spoke with you prior to the decision to release or provide transcripts?
A I have no recollection that they spoke to one another.
Q I believe during your testimony earlier you indicated that the transcripts provided to the Treasury Department Office of General Counsel were unredacted?
A Were unredacted, that's correct.
Q To your knowledge, had any transcripts been redacted at this point?
A No. Redaction didn't take place until we issued our final report.
Q Had anybody raised with you the subject of redacting transcripts?
A No.
Q Are you aware of any discussions among anybody regarding the redaction of transcripts?

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A No.
Q So, there was no decision to provide unredacted as opposed to redacted transcripts?
A That's correct.
MR. O'CALLAGHAN: You mean as the documents existed? Do you see the distinction? You are making an assertion that there wasn't a decision to be made versus providing unredacted and redacted versus whether there was a decision to provide existing documents which were redacted and unredacted.
MR. PORTNOY: I don't think I understand your clarification, but allow me to try my question again.
MR. PORTNOY: Actually, read back my question, please.
(The reporter read the record as requested.)
THE WITNESS: There was no decision to provide unredacted as opposed to redacted transcripts.
MR. O'CALLAGHAN: Do you see my problem? It is kind of strange.
BY MR. PORTNOY:

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Q At any time -- strike all that. Let me go back.

During the time period referenced in this E-mail, did you ever consider whether to provide redacted or unredacted transcripts?

A No.

MR. O'CALLAGHAN: I'm sorry. It is just -- it kind of puts forward the -- is the question whether he considered redacting or unredacting, or is it considering --

BY MR. PORTNOY:

Q When you considered whether to provide the transcripts, did you consider whether those transcripts should be redacted or unredacted?

MS. VASSAR: Just say one; right?

MR. O'CALLAGHAN: That's fine the way it is.

THE WITNESS: No.

MR. O'CALLAGHAN: I think that question makes it clearer.

MR. PORTNOY: That's fine. I'm happy to clarify the record.

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BY MR. PORTNOY:

Q Just to be totally clear here, are you aware of anybody objecting to the provision of deposition transcripts to the Assistant General Counsel for Administration?

A I'm not aware that anybody objected to that.

Q Nobody objected before they were provided?

A I never heard any objection, period, before or after.

Q Look at a document numbered 367, which is a July 19, 1994 E-mail from Jim Cottos to Francine Kerner with copies to Raisa Cesario, but it apparently was not directed to you.

If you would read the highlighted portion.

A "It is nice of Jane Sherburne to offer to tell us of the inconsistencies of the testimony, but I think it should be the other way around. I think she should give us copies of their interviews and let us compare."

Q At the time this E-mail was written, were you aware that the White House had -- that there was

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discussion of the White House providing to your staff materials produced during their investigation?

A No, I was not.

Q Are you aware whether the White House ever did provide materials to anyone on your staff?

A As it applies to their interviews? No, I wasn't, but it wasn't necessary, because we were interviewing the White House people. We were establishing our own records of interview.

MR. O'CALLAGHAN: I'm just a little concerned with the characterization. You said that the White House is providing Treasury IG with information regarding their investigation.

MR. PORTNOY: My question was whether Mr. Cesca was aware of any discussion of the subject of the White House providing materials from their investigation to his staff.

MR. O'CALLAGHAN: As reflected in here?

MR. PORTNOY: No. Any knowledge from any source.

MR. O'CALLAGHAN: Okay.

BY MR. PORTNOY:

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Q We have gone a little sideways and I need to be sure I have asked you this question. I apologize if it is repetitive.

A Okay.

Q Would it be fair to say that you saw no problem at the time with providing copies of the deposition transcripts to Mr. Schmalzbach, his staff?

A That's correct. No, I didn't see any problem.

Q Knowing now what you know, do you see any problem?

A No.

Q So, would it be fair to say your view then and now was --

A It was not a problem to provide him with the transcripts.

Q Do you have any reason to believe that the provision of transcripts to Mr. Schmalzbach in any way affected your investigation?

A No, it did not.

Q Turning to the events of the 23rd of July, you testified earlier that Ms. Kerner called you at

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about 1:00 in the afternoon?
A That's correct.
Q And she related to you a conversation she had had?
A Right, with, I believe it was Steve McHale.
Q And what was the subject of her conversation with Mr. McHale?
A The subject of the conversation was that Lloyd Cutler had requested that he receive copies of our transcripts, witness transcripts.
Q Do you know to whom Mr. Cutler made that request?
A To whom precisely that request went to in the department, I do not.
Q Do you know generally?
A I don't know if it would have come in directly into Steve McHale's office or would have gone to another level. I think it is -- the term requested of the secretaries may be from a general standpoint. I don't think he called up Secretary Bentsen and said I want them.

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But to respond to your question, I don't know who precisely would have been the recipient of that request.
Q Might the conversation have been on a staff level?
A It could have been.
Q Could it have been, for example, Ms. Sherburne and Mr. McHale?
A I think that could be likely.
Q But it still could have been reported to you as Mr. Cutler requesting that Secretary Bentsen provide it?
A Absolutely.
Q You initially concluded not to provide the transcripts?
A That's correct.
Q Would you briefly state just once more what your concerns were.
MR. O'CALLAGHAN: No offense, Jim, but it is already in the record. Unless you can state a real purpose for going through it all over again, I don't see what value it is going to add, unless you

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have some clarifying statements you want to make regarding what he has already testified to. These are the exact same questions that were asked earlier.

MR. PORTNOY: I have notes as to Mr. Cesca's concerns. I will be happy to read them and ask him if he agrees with me that those were his concerns, if you would prefer that.

MR. O'CALLAGHAN: Are you trying to -- I don't understand what you are trying to accomplish.

BY MR. PORTNOY:

Q I believe you testified, sir, that you were not -- I believe you testified that your concern did not center on the content of the deposition transcripts.

A Right.

Q You testified that you hadn't expected the request and were therefore surprised by it?

A That's correct.

Q Your initial reaction as a cautious professional person --

A Was not to release, right.

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Q You also were concerned that the depositions involved the --

A I was concerned with was it appropriate for us to release the transcripts, appropriate from the standpoint that we were conducting an investigation relating to contacts between Treasury and the White House, and now the White House is coming to the Treasury asking for information. I was concerned about the appropriateness of whether or not we should release that information.

And my inclination, in a lot of IG type operations, when people ask for information outside of our investigative arena, it always causes you to kind of hesitate. You don't willingly say oh, sure, you can have whatever you want. We tend to hesitate whenever that request comes. That's the way I reacted.

Q Would it be fair to describe it as sort of a gut level response?

A That's correct.

Q Or a visceral response?

A That's correct.

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Q Rather than a reasoned response?
A That's right.
Q Did Ms. Kerner express opposition to your decision?
A I think we discussed it. I don't remember precisely whether or not she was totally in favor of it, but we discussed it; as I said, we probably spoke for about 15 minutes on the telephone.
I really hadn't thought it all the way through like I did subsequent to that conversation. But I think I basically was relying, as you indicated, on my gut reaction, and that was not to release the transcripts.
Q Did you get the sense that Ms. Kerner was trying to change your mind or convince you to do something different?
A I think that -- I don't think that she was trying to change my mine as much as she was trying to give me both sides of the issue.
Q So she was functioning as your legal counsel?
A That's right.

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Q And giving you the information and allowing you to make the decision?
A That's right.
Q You didn't feel like she was pressuring you, did you?
A No.
Q During the subsequent hours when you were reconsidering your decision, did you discuss your decision with anyone?
A No, I did not.
Q Did anyone contact you in any way?
A No.
Q So, this was simply an internal process?
A That's right.
Q I believe you said one of the factors you considered was that you had completed your investigation.
A That's correct.
Q So, in your estimation, your investigation was completed by the 23rd of July?
A Right, that's correct.
Q Why was this a significant factor?

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A Well, it was significant from the standpoint that we had interviewed everybody that we needed to interview. Now, there is that one exception, and that applies to the Office of the Comptroller of the Currency, who we interviewed the early part of that following week at the request of the Office of Government Ethics.

As of that time, as of the 22nd and 23rd, in my view, we had completed our investigation and we had sworn testimony from all of the witnesses and the only reason, as I indicated earlier, we didn't issue a final report was to provide the opportunity to the Office of Government Ethics to review our report of investigation and recommend any changes they saw was necessary as it applied to the content of our report.

Q Would one of the reasons for not releasing transcripts while an investigation was open be so that witnesses couldn't compare their testimony?

A That's correct; right.

Q You weren't concerned about that, were you, sir?

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A No, because our investigation was already completed.

Q You don't have any reason to believe that any witnesses did compare testimony, do you, sir?

A That's correct.

Q You also indicated that part of your thinking was that the information in the depositions was already essentially public?

A That's correct.

Q Would you expand on that, please.

A There were, I guess, a number of articles that appeared in the newspaper in which discussions on the criminal referrals had already been mentioned. And then, although the hearings hadn't started, the House -- the hearings in the House and the hearings in the Senate were not concurrent hearings. They were consecutive.

If somebody was going to tell their testimony, all they had to do was listen to the hearings and they could have told the testimony.

During the conduct of the investigation, based upon our discussions among the investigators,

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it did appear as though nothing new was coming out of those interviews that we hadn't already heard about.
Q Would you it be fair to say you didn't think there was any risk?
A That's correct.
Q And looking back, would it be fair to say that your estimation of the risk was accurate?
A Nothing has ever been disclosed to me that individuals took advantage of the fact that we released those transcripts to Mr. Cutler.
Q In your judgment, would there be anything improper or inappropriate about Mr. Cutler using those deposition transcripts to prepare for his testimony before Congress?
A None that has ever been explained to me.
Q Would there be anything inappropriate about Mr. Cutler using the knowledge he gained from those deposition transcripts to assist other White House personnel in preparing for their testimony?
A I don't know the answer to that, whether or not that -- I just don't feel that I'm qualified to render an opinion on that.

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Q Let me ask you a different question.
A Sure.
Q Would there be anything inappropriate about an individual who is to testify before Congress reviewing sworn deposition transcripts prior to their testimony in general?
MR. O'CALLAGHAN: That's a pretty general question.
THE WITNESS: Off the top of my head, I don't see where there would be a problem with that. I mean, if there is sworn testimony, then that record has been established.
BY MR. PORTNOY:
Q Please continue.
A Unless there is a legal prohibition against it, I am not aware of any reason why not.
Q You wouldn't have any objection to people using information collected during your investigation for other lawful purposes?
A Not being a lawyer, I don't see a problem with that. But maybe if I were a lawyer, I would, or if I were a Congressman getting ready to have a

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hearing, maybe I would. But again, without thinking it through, I don't see where there would be a problem with that.

Q But as an investigator, your concern is the integrity of your investigation; correct?

A That's correct.

Q And the integrity of your investigation isn't threatened by people making use of those transcripts in another forum?

A I would have a problem if we conducted an interview with an individual and developed a transcript of that interview, and then that transcript of interview was then given to another party who was going to be a witness in our investigation and now that party had the opportunity to take a look at that transcript. I would definitely have a problem with that.

Q But that didn't occur, did it?

A That did not occur.

Q At least to the best of your knowledge?

A That's correct.

Q In fact, it probably could not have

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occurred, could it, because the only witness who remained to testify at this point was Mr. Ludwig?

A That's correct.

MR. O'CALLAGHAN: In your investigation; right?

THE WITNESS: That's correct.

BY MR. PORTNOY:

Q And your concern with respect to the transcripts was the integrity of your investigation?

A That's correct.

Q When you returned from church, you had received a phone message from Mr. Knight?

A I was informed that Mr. Knight had attempted to get in touch with me.

Q And you attempted to return Mr. Knight's call?

A That's correct.

Q You didn't reach Mr. Knight?

A No, I did not.

Q Instead, you ended up in a three-way conversation with Ms. Kerner and Mr. McHale?

A That's correct.

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Q During that conversation, you learned that Mr. Knight had wanted to express Secretary Bentsen's desire to provide the deposition transcripts to Mr. Cutler?

A That's right. He wanted to communicate to me Secretary Bentsen's desire to release the transcripts to Mr. Cutler.

Q Did you view Mr. Knight's call to you or Secretary Bentsen's preferences regarding release of the transcripts as pressuring you? Or to clarify, as an attempt to pressure you?

A I felt that it was a legitimate request and yet -- my concern about that was what is the right thing to do. I could understand the request that was being made of us, but the concern I had again was the integrity of -- it is not only the investigation but of our office and kind of me personally.

So, the request of Secretary Bentsen became just another factor that we needed to include in the decisionmaking process. Now, whether or not that created pressure on me, I would say this, that if I had concluded during the day that it was not

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appropriate to release the transcripts, I would not have.

But as a result of my deliberations leading up to that conversation, since I had already concluded that if they were to come back to me to ask me to reconsider my original decision, then I would have gone ahead and released the transcript.

Q Did you reach that conclusion prior to learning that Mr. Knight had called?

A Yes.

Q And prior to learning the subject of Mr. Knight's call?

A Right. In other words, going through that deliberative process myself, I felt that it would have been appropriate to release the transcripts.

Q Would it then be fair to describe Mr. Knight's call as a catalyst?

A That's correct.

Q But it wasn't really a factor in your decision, was it?

A Well, all it did was cause me to make the second decision.

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Q So, it was the opportunity to make the second decision?
A That's correct.
Q But the decision in your own mind had already been made?
A That's right.
Q You testified that Mr. McHale drafted the correspondence to the White House?
A That's correct.
Q I show you a document numbered S 002064, which is a letter dated July 23 from Mr. McHale to Ms. Sherburne.
(Exhibit S 002064 identified.)
BY MR. PORTNOY:
Q I ask if -- I believe you were shown that document in a slightly different form earlier in this deposition.
A Okay.
Q Is that the transmittal letter that Mr. McHale drafted?
A Yes, that's correct.
Q Does that letter impose conditions on the

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transmittal of the documents to the White House?
A Yes.
Q Prior to this letter being drafted by Mr. McHale, or at least being transmitted to the White House by Mr. McHale, did you have any discussion with him with respect to any of those conditions?
A We discussed the conditions during the telephone conversation but not prior to the telephone conversation.
Q Do you recall the specifics of your conversation regarding conditions?
A No, but looking at this letter, the conditions expressed in this letter were conditions that we discussed on the phone.
Q When you made your decision, your internal decision to release the deposition transcripts, was that decision subject to any conditions?
A No. I think all this letter did was to provide an additional level of -- an additional level of security over the handling of the documents.
Q Do you have any basis to know where else

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Mr. McHale might have derived these conditions from?
A No, I don't.
Q Did you have any conversations with anyone else regarding the conditions under which the White House would provide documents?
A No, I did not.
Q You testified earlier that, prior to this deposition, you had no reason to believe that the White House had violated any of the conditions of that letter.
A That's correct.
Q And I believe Mr. O'Callaghan showed you a newspaper article?
A That's correct.
Q And that newspaper article quoted testimony from Mr. Cutler?
A That's correct.
Q You expressed some concern that Mr. Cutler's testimony might have indicated conduct that went beyond the terms of the agreement.
A It seems to me it was inconsistent with what the terms of the agreement were.

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Q But you just testified you didn't negotiate the agreement; right?
A No.
MR. O'CALLAGHAN: Just for clarity, it was an AP wire story, not an article.
MR. PORTNOY: Thank you for that clarification.
BY MR. PORTNOY:
Q And you weren't privy to any conversations between Mr. McHale and Ms. Sherburne?
A No, I was not.
Q Or anyone else who might have been negotiating the conditions under which the documents were transmitted?
A That's correct.
Q So, your assessment of Mr. Cutler's testimony is based entirely on just your reading of the document?
A That's correct.
Q You don't have any personal knowledge?
A That's correct.
Q At the time that you provided your draft

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report to Secretary Bentsen, were you satisfied that the report was complete?
A Yes, I was.
Q Were you satisfied that the investigation was complete?
A Yes, I was.
Q Was there any further information that you wanted in order to prepare a proper report?
A No. Insofar as we were concerned, we were just waiting for information from OGE. Insofar as I was concerned, that was a final product.
Q Has anything you have learned since then altered your judgment regarding your investigation in any way?
A No.
Q With the possible exception of having to endure this deposition, has anything that has occurred since the investigation altered your judgment that it was appropriate and proper to provide the draft report to Secretary Bentsen?
A No, there has been nothing.
MR. O'CALLAGHAN: That is kind of a weird

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question to ask him to exclude -- you understand what I am saying?
BY MR. PORTNOY:
Q Has anything that has occurred since the 22nd of July 1994 altered your judgment that it was the appropriate and proper thing to do, to provide a draft of your report to Secretary Bentsen?
A No.
Q Has anything that has occurred since July 23rd of 1994 altered your judgment that it was appropriate and proper to provide deposition transcripts to Mr. Cutler?
A Nothing has altered my judgment, with the exception that other IGs have indicated that it was inappropriate. But in terms of myself personally, there is nothing that has altered my original decision.
MR. PORTNOY: Thank you, sir. That's all I have.
MR. O'CALLAGHAN: I have a few follow-ups and trust me, I am usually pretty quick.
EXAMINATION

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BY MR. O'CALLAGHAN:
Q You were just asked whether your only concern with regard to releasing the transcripts to your interview was whether or not it would impede the investigation that you were conducting.
A Right.
Q Were you concerned at all that the possible release of the unredacted transcripts could affect and influence the testimony of White House officials or others who were testifying before Congress on the same matter regarding White House contacts?
A Well, I felt that they were doing their own separate investigation. So, consequently, they were developing the information independent of us.
Q Were they conducting as in-depth an investigation as you conducted?
A I don't know the depth of the investigation that they conducted,. It is hard for me to judge in terms of whether or not they went as far as we did. Maybe our objectives were different. But I think that since our investigation was geared more toward satisfying the needs of the Office of Government

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Ethics, and we were zeroing in on those provisions of the standards of conduct, then their line of questioning could have been a little bit different than our line of questioning.
Q But you were investigating whether there were possible improper contacts between the White House and Treasury with regard to confidential information that was held by the RTC; is that correct?
A That's correct.
Q And weren't White House officials and others testifying before Congress beginning, I believe, the week of July 26 with regard to their involvement in any such possible improper conduct; is that right?
A That's correct.
Q Was consideration given to the fact that testimony taken during the course of your investigation, if imparted upon people who didn't have access to that testimony through the release of the unredacted transcripts to the White House, could affect those witnesses' testimony in front of

301

Congress?
A I don't remember that being a part of the discussions that we had.
Q You were also asked whether you felt any pressure releasing the transcripts on July 23rd. Was the request you received on July 23rd an extraordinary request, out of the ordinary?
A I would say -- well, it was the kind of request that I had never experienced before.
Q Why is that?
A Well, you are talking about a request that is coming from the White House. I'm not aware of any investigations we ever did in the past in which they involved White House individuals. In the past I have never been aware of a Secretary asking that information be released. There is a difference.
The whole situation was a lot different than what I previously had experienced. So, I mean you made decisions based upon the best judgments you had available to yourself, taking a look at all the different factors, and then I had to arrive at a decision.

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Q Would you agree that that might have added a degree of pressure to you in making your decision on whether to release the information?
A I'm not saying that there was any more pressure on me in making that decision than there had been during the entire investigation. The whole investigation was pressure-intensive.
Q These are two quick questions.
A Sure.
Q Who was signing your evaluations in July of 1994 for that evaluation period? Who was the person who signed?
A Ed Knight signed my evaluation.
Q Who ultimately requested or informed you that Secretary Bentsen wanted the transcripts sent over to the White House?
A It was Ed Knight.
Q Would your decision to hand over the transcripts on July 23rd have been affected either positively or negatively if you were aware that there was an agreement between Mr. Cutler and Secretary Bentsen to provide the transcripts that was entered

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into in the early part of July?
A Would that have affected my decision?
MR. PORTNOY: If in fact that is true.
MR. O'CALLAGHAN: Yes. I posed it in that manner. I didn't say it was.
BY MR. O'CALLAGHAN:
Q I'm saying if that was the case.
A If I had known in fact then?
Q Yes.
A Then I think the process by which I would have made a decision probably would have been different. I would have probably involved the other -- Jack Adair, the Inspector General from the Resolution Trust Corporation.
Q Why would you include him?
A Well, because I indicated that I felt that we were kind of equally responsible for the conduct of the investigation.
Q You mentioned earlier that you conducted a joint investigation with the RTC; is that correct?
A Right.
Q The RTC Inspector General's office.

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A Right.
Q So, generally -- but you mentioned earlier that you thought that the documents that you handed over to the White House and also to Mr. Schmalzbach belonged to Treasury IG. But didn't RTC IG also have an interest in those documents because they provided information?
A That's correct.
Q Didn't that information also contain confidential RTC information?
A That's what I learned later on.
Q You stated earlier, when Mr. Portnoy asked you, whether the dissemination of the transcripts to Mr. Schmalzbach on July 18th had no negative affect on your investigation.
A That's correct.
Q Do you know for a fact that the transmittal of the transcripts to Mr. Schmalzbach didn't have a deleterious effect on your investigation?
A That's correct.
MR. PORTNOY: Meaning you do know for a fact that it had no deleterious effect, or you don't

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know?
MR. O'CALLAGHAN: That was a poorly phrased question.
THE WITNESS: It did not have a deleterious effect on our investigation.
BY MR. O'CALLAGHAN:
Q If the transcripts had been delivered, let's say, to the White House beginning on July 18th, could that have had a deleterious effect on your investigation?
MR. PORTNOY: Do you mean transcripts to individual witnesses or transcripts as a general proposition?
MR. O'CALLAGHAN: To the White House counsel's office, yes.
MR. PORTNOY: You mean if like a stack of transcripts had been carried over?
MR. O'CALLAGHAN: Not to the witnesses for corrections.
THE WITNESS: It could have if the transcripts had been shared with individuals that we had not interviewed.

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BY MR. O'CALLAGHAN:
Q Were questions sent to any of the witnesses that you interviewed after July 18th, any follow-up questions of any nature?
A I don't know.
Q Did Secretary Bentsen ask the Office of Inspector General/Treasury to provide him with a report or did he ask you to assist OGE in producing an analysis?
A His request, I believe, said that he asked us to assist the Office of Government Ethics.
Q So he didn't request the draft report that you prepared?
A That's correct.
Q Why did Secretary Bentsen request that OGE produce the analysis versus asking the Office of Inspector General to publish a report?
A Well, because it is not our role to render those kinds of analyses and decisions.
Q Did he, in his comments to the press, state that one of the reasons he was asking the Office of Government Ethics to render the analysis was to avoid

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the appearance of any impropriety?
A That I don't know.
Q Just to your knowledge.
A I don't know.
Q I would like to direct your attention to the July 6 letter again, and my Bates stamps on it are 006272. I believe this is the transmittal letter Mr. Cutler sent to you with regard to a production the White House made for your investigation. We have been over the terms of the agreement, which limit your ability to make more than two copies and also require you to keep the documents in a secure location, and also asks you to notify the White House two days in advance in the event that you wanted to show copies of the documents to anyone else.
A Yes.
Q Did you enter into a similar agreement with anyone else with regard to documents provided to you in connection with your investigation?
A No, we did not.
Q Did you treat other documents that you received in the course of your investigation from

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other agencies or government entities in the same way that you treated White House documents pursuant to this agreement?
A I'm trying to think. Are you referring to -- the only other agency we would have received documents from would have been the Resolution Trust Corporation.
Q In that event, did you treat the documents received from the Resolution Trust Corporation in the same manner?
A In terms of providing security for those documents, yes.
Q Did you make more than two copies of any of the documents you received from RTC?
A I don't know the answer to that.
Q How about the transcripts, were they kept in a locked, secure place?
A To my knowledge, they were.
MR. O'CALLAGHAN: I have no further questions.

EXAMINATION

BY MR. PORTNOY:

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Q I have probably two or three.
Mr. O'Callaghan asked you whether Mr. Knight signed your evaluation.
A Yes.
Q Has Mr. Knight ever in any way indicated that his evaluation of you would be influenced by your actions in connection with this investigation?
A No.
Q Did he ever give you any reason to believe that your evaluation would be influenced by your actions in this investigation?
A During the course of this investigation, it wasn't even established that Mr. Knight would sign my evaluation.
Q When was that established?
A That was established whenever I completed my own evaluation and I needed somebody to sign it as a rater. That would have been, like, in December of 1994.
Q So prior to this investigation, Mr. Knight had never signed an evaluation for you?
A No.

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Q You indicated the fact that Secretary Bentsen wanted the deposition transcripts released to the White House was unusual.
A Yes.
Q And was something that you considered noteworthy.
A I would say it was noteworthy.
Q I believe you testified earlier that you made the decision to release the transcripts before you spoke with Ms. Kerner and Mr. McHale?
A Well, maybe I should clarify that. Through my deliberations, I felt it was appropriate then to release the transcripts. Now, to make the decision and then call somebody and say go ahead and release them, I wasn't ready to make that phone call and initiate a release of documents.
Q But your internal deliberations were completed?
A That's right.
Q So when you made your decision, you didn't yet know that Secretary Bentsen wanted them released?
A That's correct.

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MR. PORTNOY: Thank you, sir. That's all.
MR. O'CALLAGHAN: I have one more to clarify.

EXAMINATION

BY MR. O'CALLAGHAN:

Q When Francine Kerner called you in the afternoon of July 23, who did she tell you wanted the transcripts sent over to the White House?

A That Lloyd Cutler had made a request that we transmit to him the transcripts of our interview.

Q And when did you find out that the Secretary wanted that done?

A That was that night. That was, like, around 6:30 that evening.

Q And were you waiting for a call to authorize you to send or not to send those transcripts over?

A No. After that phone call with Mr. Kerner -- after that phone call with Ms. Kerner early in the afternoon -- the only thing is, what I anticipated was a second call asking me to revisit that original decision. In other words, in

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anticipation that I may be asked to reconsider that initial decision, I thought that that was a possibility.

Q Did Ms. Kerner relate your initial decision not to turn them over to anybody?

A She related that decision to Mr. McHale.

Q When did she do that?

A It would have had to have been right after she and I had our conversation.

Q And did Mr. McHale inform anybody of your decision not to turn them over?

A All I can do is surmise that he then notified Mr. Knight.

Q And then you received the call from Mr. Knight that evening?

A Right.

Q Did you expect your decision would be well received?

A I didn't know how it was going to be received. In anticipation that I might be asked, I thought that the feeling within the department is that maybe we should release the documents. So then

I felt as though that a second request probably would come. When you say no to something, then you can always anticipate maybe a second request.

MR. O'CALLAGHAN: The possibility, yes.

Thank you very much for clarifying that. That's all I have.

(Whereupon, at 6:50 p.m., the deposition was concluded.)

ROBERT P. CESCA

CERTIFICATE OF NOTARY PUBLIC & REPORTER 314

I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Brenda Smonskey
Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 14, 1996

DEPONENT Mr. Robert Cesca

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
169	8	delete "McLean"		personal privacy
169	18-22	redact		personal privacy
170	1-3	redact up to "When . . .		personal privacy
170	16	redact telephone number		personal privacy
170	18	redact telephone number		personal privacy
7 of Index	5-6	redact lines re: home telephone		personal privacy
Index	Sec. -D- (2 lines)	redact references to divorce		personal privacy

NOV- 5-95 MON 15:39 TO 99276492 P005/005 P.02

DEPONENT R. Cesca

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
107	18	INAPPROPRIATE	Appropriate	TRANSCRIBED IN ERROR
169	9	SUNDAY	SATURDAY	DON'T KNOW the reference to SUNDAY

03/04/94 15:29 CONG. F. WOLF WASHINGTON, DC → 96220873 NO.818 P003

FRANK R. WOLF
10TH DISTRICT, VIRGINIA

WASHINGTON OFFICE
104 CANNON BUILDING
WASHINGTON, DC 20515-4610
(202) 225-5136

CONSTITUENT SERVICE OFFICES
13873 PARK CENTER ROAD
SUITE 130
HERNDON, VA 22071
(703) 709-5800
1-800-945-9653
(OUTSIDE VIRGINIA)

110 NORTH CAMERON STREET
WINCHESTER, VA 22601
(703) 667-0990

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEES
TRANSPORTATION
TREASURY—POSTAL SERVICE—GENERAL GOVERNMENT
COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Congress of the United States
House of Representatives
Washington, DC 20515-4610

March 4, 1994

Mr. Robert Casca
Deputy Inspector General
Department of the Treasury
15th and Pennsylvania, N.W.
Suite #2412
Washington, DC 20220

Dear Mr. Cesca:

I am writing as a member of the Treasury, Postal, General Government appropriations subcommittee to request that the Office of Inspector General investigate the recent meetings of Treasury officials with the White House to provide "briefings" on Madison-Whitewater and other matters. The astonishing revelation that not only one, but three such improper meetings were held between Treasury officials and the White House calls out for serious investigation.

In the past I have found Inspector General investigations to be helpful in providing assistance in such matters. When the CIA move was proposed to West Virginia, the CIA Inspector General uncovered information that previously had not been forthcoming from any other sources. I hope your office will be able to provide the same kind of independent analysis.

While the Secretary of the Treasury has requested the Office of Government Ethics to investigate this matter, I believe the Inspector General would be more appropriate. Several months ago I requested an investigation by the Office of Government Ethics into the situation with White House passes and was told by their office that they do not have the capability to do investigations. Perhaps Secretary Bentsen was under the same misunderstanding that I was and thought that the Office of Government Ethics can do independent investigations. That is not the case. The Office of Government Ethics just reviews the investigations of other agencies.

If the Office of Government Ethics were to investigate this matter the initial investigation would be done by the White House ethics officer and they would subsequently review the matter. Since Mr. Nussbaum himself is the White House ethics officer and he was one of the individuals involved in the improper meetings he obviously cannot investigate himself. Having a subordinate of his investigate him would also be inappropriate.

1890

In addition to these meetings, I believe any other meetings [illegible] with banking matters or FDIC or RTC investigations

involving White House officials or other politically connected individuals should also be investigated as part of this matter.

One aspect that is particularly troubling in this affair is that even after the Altman meeting with the President's White House Counsel Bernard Nussbaum, the First Lady's Chief of Staff Maggie Williams and Deputy White House Chief of Staff Harold Ickes came to light last week, the Treasury Department was not forthcoming about discussing the previous White House meetings that had been held with high level Treasury officials. In these meetings last fall, the White House was informed of "criminal referrals" that they would be mentioned in. If the press had not reported these earlier meetings one has to wonder if anyone at Treasury would have brought them to light or if these meetings would have continued to go on.

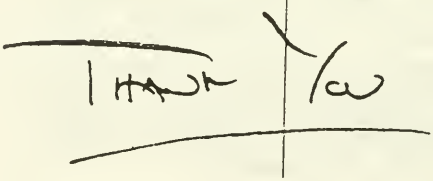
I believe the Inspector General is only one proper investigatory tool to look into this matter. Obviously, Congressional hearings would be more appropriate in exercising the role of Congress in oversight but to date this option has not been made available by the Majority party in either house of Congress.

If you have any questions regarding this matter, please contact my office.

Sincerely,

Frank R. Wolf
Member of Congress

FRW:bjc



P. 02

-13-95 FRI 09:41 AM



Week Ending March 20

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RC -

CONFIDENTIAL

I N T E R O F F I C E M E M O R A N D U M

Date: 13-May-1994 04:34pm EST
From: Francine Kerner
KERNER
Dept: COUNSEL
Tel No: (202) 622-1090

TO: James Cottos (COTTOS)
TO: Raisa Cesario (CESARIO)
CC: Robert Cesca (CESCA)
Subject: Discussion on Whitewater

In anticipation of the OIG inquiry, Bob Cesca and I met with Dennis Foreman and Ken Schmalzbach. Here are the issues discussed:

1. Fiske has given the go ahead for the White House to review Treasury documents in preparation for Congressional Hearings.

2. Fiske has not given the go ahead to OIG for an administrative inquiry. Ed Knight will talk to Fiske again next week to try and secure the approval for us to begin.

3. Barring unforseen obstacles, Bob agreed that OIG could have a report on the three meetings at the White House completed within three to four weeks of Fiske giving us the ok to proceed.

4. Dennis said he would be calling OGE to convey the Secretary's request for an OGE opinion on our report findings before Congressional hearings. Dennis will get back to us on OGE's response.

5. Dennis suggested that it might speed the process up to have an OGE attorney sit in on OIG interviews. If OGE agrees, Bob said we would have no objection.

6. Covering the White House end is an issue that still needs to be dealt with. There are several possibilities. (i) Joel Klein could interview White House personnel. We could interview Treasury personnel. We could exchange interview reports. Of course, this is less than an ideal approach for attempting to resolve any inconsistencies that might arise. (ii) Joel Klein could sit in on our Treasury interviews. We could sit in on his White House interviews. A single report of interview could be drafted. This would be ok. (iii) Treasury OIG could do all the interviews at Treasury and the White House. Again ok. (iv) OIG could be barred from interviewing White House personnel. Klein could be permitted to interview Treasury personnel. Other variations on this theme--all rather unsatisfactory--are possible.

[redacted]

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If we can't access to White House personnel, we agreed that our report would be qualified accordingly. We also agreed to call Klein ourselves as soon as Fiske gives us the ok to proceed.

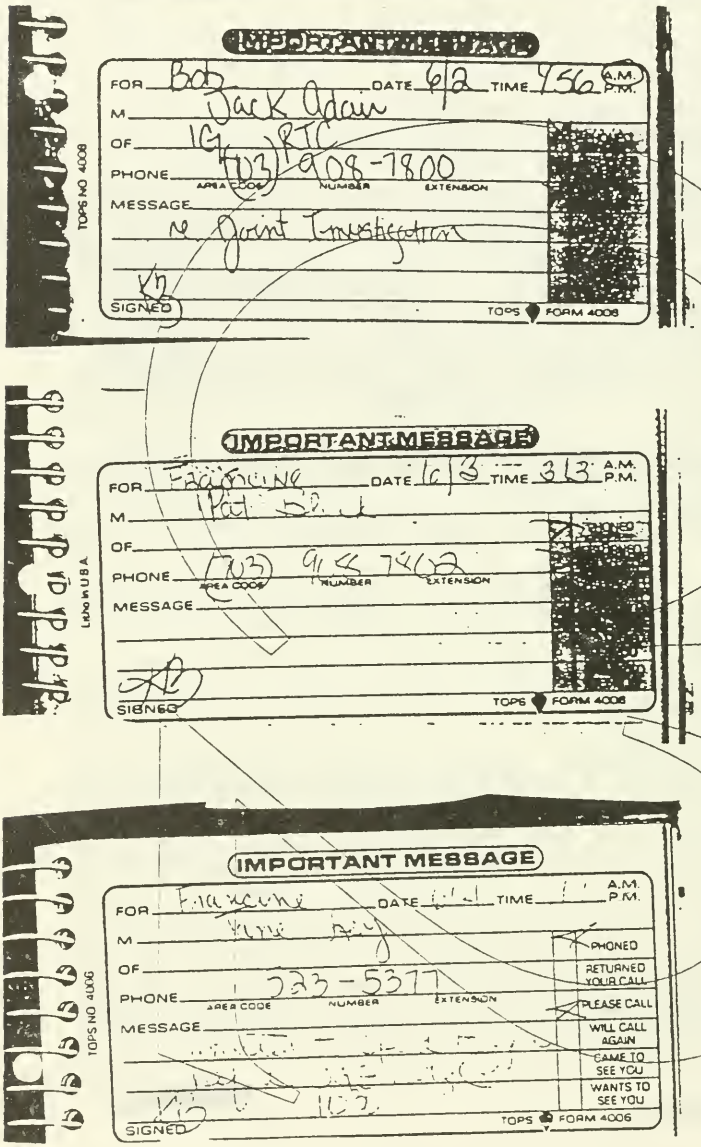
7. Production of Josh Steiner's diary for the Grand Jury was handled by Steiner's attorney. Production of Roger Altman's yellow diary sheets was handled by Altman's attorney. Production of Jean Hanson's small pocketbook calendar/diary was handled by Hanson's attorney. Six yellow sheets written by Altman and secured in his office safe were turned over by the Department. We would have to take steps to ensure production of relevant materials turned over by private counsel. We are entitled to these materials.

8. Dennis wants to talk with Jean Hanson's private attorneys. We asked him not to and he agreed that the OIG interview needed to come first.

If you have any questions, please feel free to call.

Francine

[redacted] 331



IMPORTANT MESSAGE

FOR Bob DATE 6/2 TIME 756 A.M. P.M.

M Jack Adair

OF IG, RTC

PHONE (703) 908-7800 (AREA CODE / NUMBER / EXTENSION)

MESSAGE re Joint Investigation

SIGNED KD

TOPS FORM 4008

IMPORTANT MESSAGE

FOR Fairbairn DATE 6/3 TIME 313 A.M. P.M.

M Pat Sullivan

OF

PHONE (703) 911-7402 (AREA CODE / NUMBER / EXTENSION)

MESSAGE

SIGNED

TOPS FORM 4008

IMPORTANT MESSAGE

FOR Fairbairn DATE 6/4 TIME 1 A.M. P.M.

M Yuri Nosenko

OF

PHONE 233-5377 (AREA CODE / NUMBER / EXTENSION)

MESSAGE

SIGNED

PHONED
RETURNED YOUR CALL
PLEASE CALL
WILL CALL AGAIN
CAME TO SEE YOU
WANTS TO SEE YOU

TOPS FORM 4006

6/22/94 Staff Meeting

CONFIDENTIAL

- Whitewater - Access to people and document due 6/29/94 - based in Special Counsel's Office
  - White House has agreed to cooperate

Francine
- Met w/ Office of Government Ethics
- OGE meeting w/RTC this week
- OGE gave their theory - Francine took notes and will copy
- Exposed concern over Francine's reporting chain — memo drafted by Francine to Dennis Foreman [Neuhaum in Italy] [all RTC]
- Private Counsel will demand to be present
- White House reviewed Treasury papers - [No copies; Laptop]
- Treasury reviewing White House papers

- Limiting scope to communications between Treasury and the White House

- Verify executive names are correct - amend changes in various bureaus

- Peer Awards - tomorrow at 9AM
  - ensure attendees have been notified

[redacted] 111

(2)

CONFIDENTIAL

- Union involvement - agreements w/FLRS flowed over to other Treasury bureaus

* Need to get FLRB ruling out to RIGI's to overcome any union problems

- Bob + Gary met w/Focus Group
  - copies to be given to each AIGI
  * - hopefully, set up next week (1/2 day)
  - Concern w/ retaliation - sensitivity level up (should det be present?) - for perspective

- E-Mails have gone out for Disabled Employee of Year

* - Law Enforcement Employee of Year (Clarendon)
  - Necessary to present positive light

- Budget for 1996 - Friday afternoon 3-5 [Treasury Annex]

* - General Counsel Quarterly tomorrow at 4:30 pm

- BEP Stolen
  - OA Res team - reviewing BEP's follow-up on $1.7 million theft - [Test Currency]
  - Waco type review
  - Deconcini introduced legislation requiring

445

Secret Service review

(3) CONFIDENTIAL

John G. – Computers

JJT 10/14/64

-x- Watchdog going to print Thursday – need to revise OI story

- Space – OSHA person checked building
  - coil problem w/Air Conditioners
  - ceilings are structurally sound

- DO is looking for space for OIG – tentative date is 11/95

- church little had Users group meeting – 34 people

- Meeting w/OIG Training Group

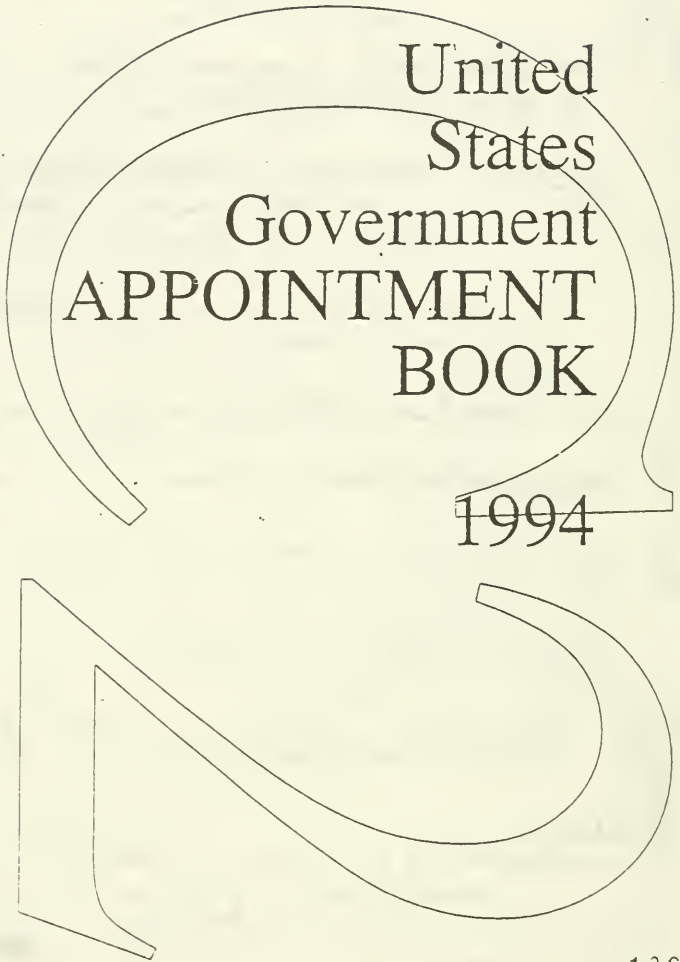
- Peer Review Group in Philly + SF

- [No Comments on Ruby Ridge Report]

- Shawn Sepan – Part-time CGC – splitting time w/Tina Bob-Brevik

- Volcic
  - Received 13 questions from Senator Grassley
  - Want response by today (6103 ing 8)
  - Want vote by next Tuesday

[redacted] 445



NSN 7530-01-233-7484

For 1995 order 7530-01-337-4696

27 Week Beginning June

May 1994

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June 1994

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31						

MONDAY, JUNE 27 178	TUESDAY, JUNE 28 179	WEDNESDAY, JUNE 29 18
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DEPARTMENT OF THE TREASURY
WASHINGTON D.C. 20220

CONFIDENTIAL

JUN 27 1994

MEMORANDUM FOR JEAN E. HANSON
GENERAL COUNSEL

FROM: ROBERT P. CESCA
DEPUTY INSPECTOR GENERAL

SUBJECT: Provision of Legal Advice and Services to OIG

As you know, the Inspector General has been requested to carry out an investigation into communications between Treasury employees and White House staff concerning the collapse of Madison Guaranty Savings and Loan, and related matters. It is important that the Office of Counsel to the Inspector General, headed by Francine Kerner, continue to provide independent legal advice and services during the course of the investigation.

Given the nature of the inquiry, we have therefore agreed that Ms. Kerner and members of her staff will report solely to the Inspector General on any matters relating to the investigation. Neither Ms. Kerner nor her staff will communicate any information about the substance of this inquiry without specific authorization from the Inspector General.

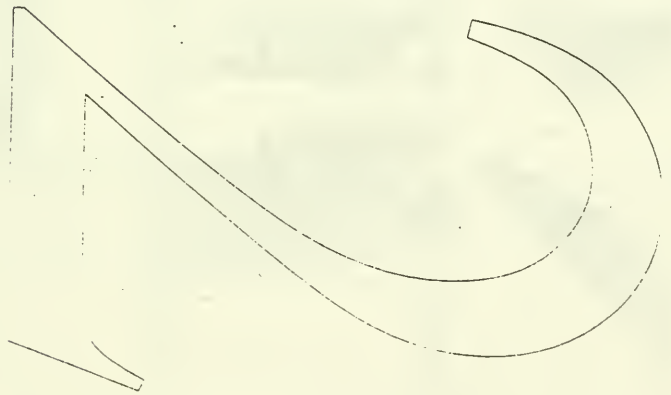
In addition, a separate job element, concerning the provision of legal advice and services in connection with this specific investigation, will be added to Ms. Kerner's performance standards for rating periods July 1, 1993 through June 30, 1994, and July 1, 1994 through June 30, 1995. The determination on relative job significance and job element performance for this job element will be at the sole discretion of the Inspector General. Moreover, we have agreed that the overall rating of Ms. Kerner's performance in each of these rating periods will need to receive the concurrence of the Inspector General.

By taking these steps, the agency will help allay any misperception that legal advice and services are being affected by people whose activities may be subject to review. Should you have any questions concerning this arrangement, please feel free to call me directly.

cc: Dennis I. Foreman
Francine J. Kerner

United States Government APPOINTMENT BOOK

1994

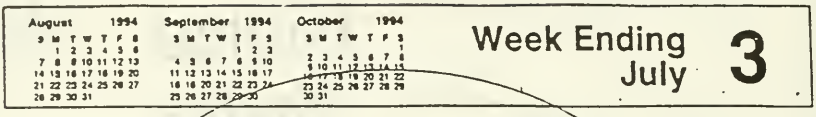


495

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For 1995 order 7530-01-337-4696



THURSDAY, JUNE 30	181	FRIDAY, JULY 1	182	SATURDAY, JULY 2	183
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4 Week Beginning July

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July 1994						
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August 1994						
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INDEPENDENCE DAY

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11 Week Beginning July

June 1994

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August 1994

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MONDAY, JULY 11 192	TUESDAY, JULY 12 193	WEDNESDAY JULY 13 194
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Week Ending July 17

THURSDAY, JULY 14	195	FRIDAY, JULY 15	196	SATURDAY, JULY 16	197
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18 Week Beginning July

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MONDAY, JULY 18 199	TUESDAY, JULY 19 200	WEDNESDAY, JULY 20 201
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OFFICE INSPECTOR GENERAL

PMB - White House Briefings
Dec. 18

THE WHITE HOUSE

WASHINGTON

July 6, 1994

Robert P. Casca
Acting Inspector General
Department of the Treasury
1500 Pennsylvania Avenue, N.W., Rm. 2412
Washington, D.C. 20220

John J. Adair
Inspector General
Resolution Trust Corporation
1735 N. Lynn Street, Rm. 1125
Rosslyn, VA 22209

Dear Messrs. Casca and Adair:

By cover of this letter, the White House is providing you with a copy of the documents produced by the White House to the Senate Banking Committee on Friday, July 1, 1994, in response to the June 22, 1994, request of Chairman Riegle and Senator D'Amato for all documents that "relate in any manner to communications between officials of the White House and the Department of the Treasury or the Resolution Trust Corporation relating to the Whitewater Development Corporation and the Madison Guaranty Savings and Loan Association." The White House is providing you with a copy of these documents for use in your joint investigation into whether communications between officials of the White House and Treasury Department regarding the RTC's investigation into Madison Guaranty Savings & Loan Association violated any applicable standards of conduct.

As discussed yesterday with Francine Kerner, Counsel to the Inspector General, Department of the Treasury, and Patricia Black, Counsel to the Inspector General, Resolution Trust Corporation, the White House is providing these documents pursuant to the following agreement:

-- you will make no more than two copies of any one of the enclosed documents;

-- these documents (and all copies) will be maintained in a secure location (either the grand jury room your investigators are using or a safe in Ms. Kerner's office at the Department of Treasury), with access limited to members of your investigative team;

006272

-- you will provide my office with at least two days advance notice before you show copies of any of these documents to anyone other than a member of your investigative team or a deposition witness; and

-- you will not append a copy of any of these documents to a deposition transcript.

In addition, I ask that you return all copies of these documents as soon as you have completed your investigation.

If you have any questions, please contact Jane Sherburne or Sheila Cheston of my office. We look forward to a continued cooperative relationship with you and your staff.

Sincerely yours,

Lloyd N. Cutler /cs

Lloyd N. Cutler

006273

CONFIDENTIAL

INTEROFFICE MEMORANDUM

Date: 18-Jul-1994 06:24pm EST
From: Francine Kerner
KERNER
Dept: COUNSEL
Tel No: (202) 622-1090

TO: James Cottos (COTTOS)

CC: Raisa Cesario (CESARIO)
CC: Robert Cesca (CESCA)

Subject: Delivery of Transcripts

In accordance with our discussion earlier today, I permitted the Office of the Assistant General Counsel for Administration to copy and retain for their use the witness transcripts in my possession.

Ken Schmalzbach, the Assistant General Counsel for Administration, has advised me that Secretary Bentsen will not permit these transcripts to be shared among agency employees until the Senate Banking Committee completes its depositions.

Also, I have advised Jane Ley of OGE that I will obtain transcript verification from each witness, starting with key witnesses. Attorneys for Hanson, Steiner, and Nussbaum have transcripts. Altman's attorneys will pick up a transcript tomorrow. I will contact attorneys for the other witnesses tomorrow, working with RTC OIG to obtain verifications.

Francine

[redacted]

11/9/94

#1 366

CONFIDENTIAL

CONFIDENTIAL

I N T E R O F F I C E M E M O R A N D U M

Date: 18-Jul-1994 08:33pm EST
From: Francine Kerner
KERNER
Dept: COUNSEL
Tel No: (202) 622-1090

TO: James Cottos (COTTOS)

CC: Raisa Cesario (CESARIO)
CC: Robert Cesca (CESCA)

Subject: McClarty Interview/White House

McClarty's secretary called to say he needs to be somewhere else at 6:15pm and needed to see us at 5:00pm. I said, "OK." Not much else to say.

Also, Jane Sherburne says she would like to see our transcripts to see whether there are inconsistencies with White House interviews. She would tell us where significant inconsistencies, if any, exist between our transcripts and their interviews. What do you think?

Francine

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[redacted]

[redacted]

11/94
#24

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Bot/Jim

Bob asked me to identify "red flags" in your 6/30 FD chronology. Here they are:

Page 1 fails to account for Bodine's testimony concerning contacts with Roelle and Margraves.

Page 2

Statement: According to Roelle, he did not advise Hanson of progress and/or problems until sometime in October. (Roelle, pg. 17)

Problem: Does not accurately reflect transcript. Also, we need to include statement of Roelle that everything leaks.

Statement: According to Hanson, Altman advised her to brief Nussbaum on the criminal referrals. (Hanson (1), pg. 33)

Problem: Does not accurately reflect transcript.

Statement: Altman stated that he did not tell Hanson to brief Nussbaum. (Altman (1), pg. 13)

Problem: Does not accurately reflect Altman's testimony. (illegible)

Statement: Hanson recalled that she attempted to telephonically contact Nussbaum with the information pertaining to the 9 criminal referrals. (Hanson (1), pgs. 42-4)

Problem: There is no evidence that Hanson imparted information or intended to impart information about all 9 referrals. Statement should be reworded.

Page 3

Statement: Nussbaum stated that he called Sloan into his office and directed Sloan to work with Hanson on the matter. (Nussbaum, pg. 10)

Problem: Work on what matter? Language subject to misinterpretation.

Statement: Sloan recalled that Hanson mentioned 8 or 9 referrals and the Clintons were mentioned in the referral along with the Clinton '84 campaign. (Sloan, pg. 6)

Problem: Mention what about 8 or 9 referrals? Language subject to misinterpretation. If we are willing to mention Clinton '84 campaign we need to include the reference in Nussbaum's account. Also, do we want to mention checks? How about Campaign as a subject of the referral?

Problem: In discussion of Early Bird, let's set forth language for readers to judge on their own.

Statement: According to Steve Katsaros, he did not become aware of [illegible]

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Problem: Fails to account for Dudine's testimony that Katsanos was notified about a week earlier.

Statement: Based upon Hanson's memo dated 9/30/93, she briefed Secretary Bentsen, Altman, Nussbaum and Sloan re: Rose Law Firm. (Hanson (1), pg. 70)

Problem: Chron should reflect her testimony about memo. Indicate that Early Bird was attached.

Statement: According to Roelle, he denied that the Early Bird message dated 9/30/93 related to the nine criminal referrals. Roelle confirmed that the Early Bird message concerned a conflict of interest issue between the Rose Law Firm and Madison Guaranty S&L. (Roelle, pgs. 26-27)

Problem: Confirmed? Confirmed whose opinion? Roelle was never asked, but according to Hanson's testimony, he's the one who sent her the Early Bird. (Who wrote Hanson's fax number at the top of the Early Bird? Roelle?) Roelle's conclusion is not the one we need to include. Katsanos spoke to Schmidt; Katsanos wrote the Early Bird; Katsanos says it referred to the criminal referrals. Why isn't his statement included?

Page 4

Statement: Roelle stated that during a scheduled RTC meeting at the Treasury Building, he advised Altman of press inquiries relating to the criminal referral. According to Roelle, Altman turned to Hanson and requested her to call "Bernie" on this subject. Roelle stated that he believed that Altman's reference to "Bernie" meant Bernie Nussbaum.

Problem: Look, we've got news inquiries and we've got knowledge of an article to be printed the next day. Roelle didn't advise Altman of a press inquiry; he advised Altman that Schmidt would be publishing an article the next day. That's the basis on which Altman gave his direction. Also, we have the problem of Roelle's statement to us not matching the 302. Statement should be reworded.

Page 5

Statement: . . . . Devore stated that he learned of the meeting from Steiner.

Problem: Do we know what Steiner says? Do we need to include it?

Page 6

Statement: According to Glion Curtis, sometime in early October, he met with either Hanson or Bowman. Curtis stated that he provided a copy of a summary to Hanson and/or Bowman.

[redacted]

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Problem: Hanson denies ever seeing the Curtis document. Don't you think her denial should be included? What does Bowman say? Shouldn't that be included?

Page 7

Statement: Meeting with Levy, Newman, Hanson

Problem: Heading should reflect Altman's presence.

Problem: What do Levy and Newman say about the meeting?

Statement: Hanson stated that she and Altman briefed Secretary Bentsen on the statute of limitation issues concerning the civil case and Altman advised Bentsen of his decision.

Problem: What does Hanson say the Secretary said? Was he advised of the 2/2 meeting?

Page 8

Statement: According to Dennis Foreman, prior to Hanson and Altman leaving Treasury to go to the White House, Hanson requested Foreman to review the one-pager paper entitled "Talking Points" Foreman's review of the Talking Points lasted 2 minutes. Based upon the 2 minute review, Foreman offered the opinion that no non-public information was included in the Talking points. According to Foreman, he was not provided an opportunity to conduct research or contact RTC to confirm the information in the talking point paper.

Problem: This is hitting below the belt. Foreman makes it very clear that he didn't need more than two minutes. He knew the issues were in the public domain. He didn't need to research the issue. Why write something that suggests he was denied an opportunity to do research or contact RTC when neither was an issue in Foreman's mind. We had concrete reasons for reaching his conclusion, but those aren't reported. Why not?

Page 9

Problem: Discussion of Nussbaum's reaction to the Altman recusal is inadequate. Doesn't Nussbaum himself elaborate on the discussion. Reference should be included.

Page 10

Statement: Hanson stated that she did not receive a written legal opinion on the ethics of this White House contact.

Problem: She obviously didn't get a written opinion. Foreman explains earlier that she got an oral opinion. Do you seek to convey the impression that she needed a legal opinion in writing? Why? If we are going to include this, we

CONFIDENTIAL

4

Hanson's affidavit, submitted late last night, states that she used the same talking points for Senator Riegle on 2/10 that were used for the White House on 2/2. The 2/10 briefing took place before Roger Altman's hearing.

Statement: Hanson denies faxing material to the White House.

Problem: I believe she says she doesn't recall. Need to check.

Page 11

Statement: Ickes asked who knew Hanson recommended that Altman recuse himself?

Problem: Rest of his statement needs to be added. If Hanson remembers.

Statement: Reference to Rikki Tigert's recusal.

Problem: Reference needs to be put in context.

Other issues:

Do we need to include Steiner's statement to Hanson that Kulka should be fired for hiring Stephens?

I'm prepared to discuss these issues tomorrow.

Francine

035

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220
July 22, 1994

Mr. Stephen D. Potts
Director
Office of Government Ethics
1201 New York Avenue, N.W., Suite 500
Washington, D.C. 20005

Dear Mr. Potts:

On March 3, 1994, Lloyd Bentsen, Secretary of the Treasury, requested the Office of Government Ethics (OGE), to conduct an investigation to determine the ethical propriety of contacts made between officials of the Resolution Trust Corporation (RTC), the Treasury Department, and the White House, with respect to RTC's work at Madison Guaranty Savings and Loan Association. The enclosed report is a draft report, pending review by OGE and determination by them of the need for any additional investigation. The investigative staffs of both the Treasury Inspector General and the RTC Inspector General are available if you have any questions regarding the enclosed material.

Sincerely,

John J. Adair
Inspector General
Resolution Trust Corporation

Robert P. Cesca
Deputy Inspector General
Department of the Treasury

Enclosure

[redacted]

CONFIDENTIAL

Potts letter

On March 3, 1994, ~~Lloyd~~ Bentsen, Secretary of the Treasury, requested the Office of Government Ethics (OGE), to conduct an investigation to determine the ethical propriety of contacts made between officials of the Resolution Trust Company (RTC), the Treasury Department, and the White House, with respect to RTC's work at Madison Guaranty Savings and Loan Association. The enclosed report is submitted to you in response to that request.

[The investigative staffs of both the Treasury Inspector General and the RTC Inspector General are available if you have any questions regarding the enclosed material.]

Sincerely,

John J. Adair
Inspector General
Resolution Trust Corporation

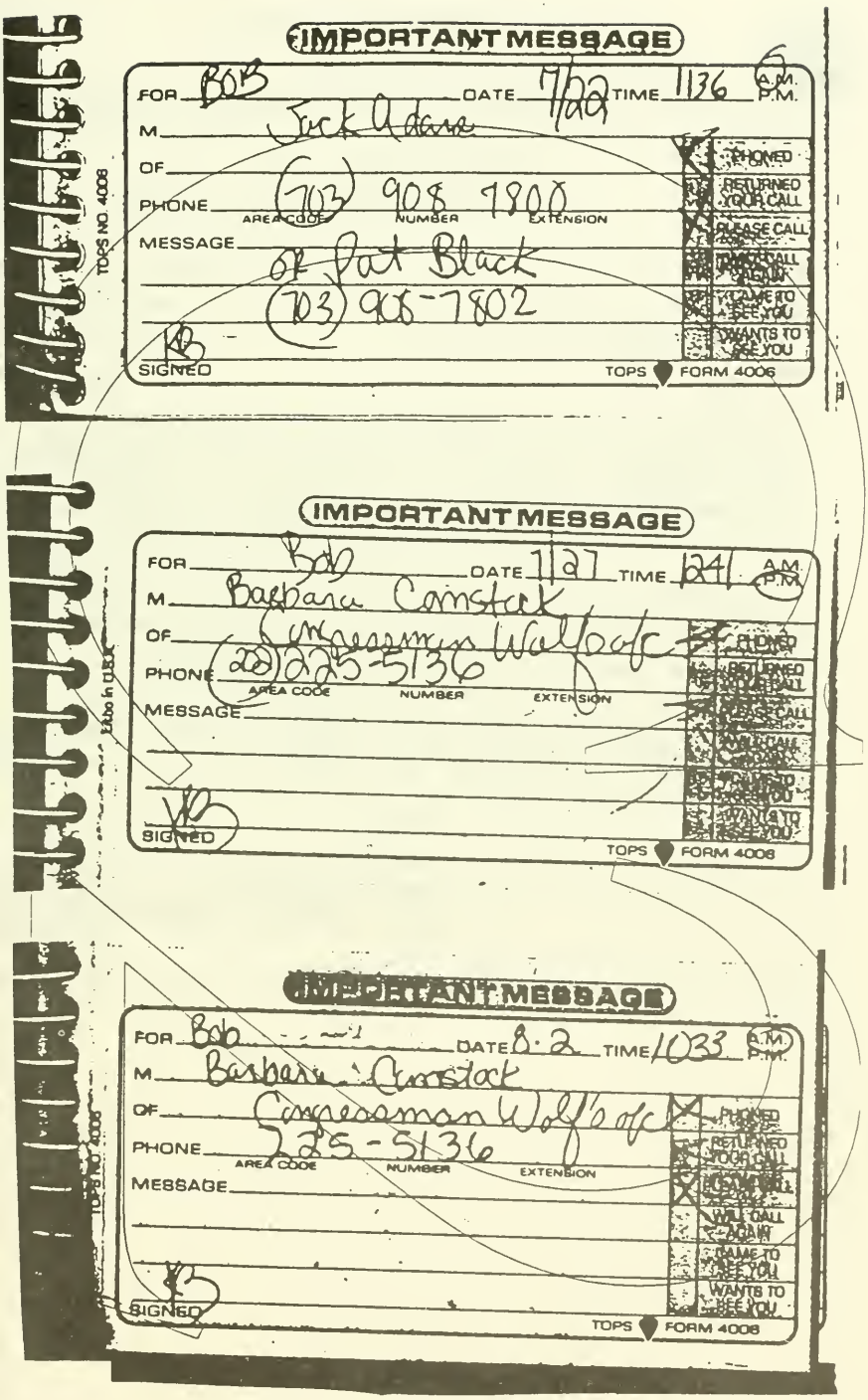
Robert P. Cesca
Deputy Inspector General
Department of the Treasury

[redacted]

For.

[Your opinion regarding any impropriety should be sent directly to Secretary Bentsen. The report ~~Enclosures~~ and ~~redacted~~ exhibits, containing non-public information. Therefore, the exhibits should not be released

457



IMPORTANT MESSAGE

FOR Bob DATE 7/29 TIME 1136 A.M. P.M.

M Jack Adams

OF

PHONE (703) 908 7800 (AREA CODE / NUMBER / EXTENSION)

MESSAGE of Pat Black
(703) 908-7802

SIGNED KB

PHONED
RETURNED YOUR CALL
PLEASE CALL
WILL CALL AGAIN
CAME TO SEE YOU
WANTS TO SEE YOU

TOPS FORM 4006

TOPS NO 4008

IMPORTANT MESSAGE

FOR Bob DATE 7/27 TIME 1241 A.M. P.M.

M Barbara Comstock

OF Congressman Wolf's office

PHONE (202) 225-5136 (AREA CODE / NUMBER / EXTENSION)

MESSAGE

SIGNED KB

PHONED
RETURNED YOUR CALL
PLEASE CALL
WILL CALL AGAIN
CAME TO SEE YOU
WANTS TO SEE YOU

TOPS FORM 4006

Libo in D.R.K.

IMPORTANT MESSAGE

FOR Bob DATE 8.2 TIME 1033 A.M. P.M.

M Barbara Comstock

OF Congressman Wolf's office

PHONE 225-5136 (AREA CODE / NUMBER / EXTENSION)

MESSAGE

SIGNED KB

PHONED
RETURNED YOUR CALL
PLEASE CALL
WILL CALL AGAIN
CAME TO SEE YOU
WANTS TO SEE YOU

TOPS FORM 4006

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 23, 1994

BY HAND

Jane Sherburn, Esquire
Office of the White House Counsel
The White House
Washington, D.C.

Dear Jane:

Enclosed are copies of the transcripts of all but one of the interviews conducted by the Treasury Inspector General as part of his investigation into contacts between Treasury and White House officials concerning Madison Guaranty. We have not yet received the transcript of the interview of Mr. McLarty.

As we discussed, these transcripts are being provided to you solely to assist you in the preparation for Mr. Cutler's testimony before the House and Senate Banking Committee hearings. You have agreed that the transcripts we are providing to you with this letter will not be disclosed publicly or shown to individuals (other than Mr. Cutler) who may be called as witnesses by either Committee until such time as we advise you that this restriction is no longer necessary. Similarly, you have agreed not to disclose these transcripts to counsel for any such individuals. Please let me know immediately if my understanding of our agreement is not correct.

Sincerely,

Stephen J. McHale
Deputy Assistant General Counsel
(Administrative & General Law)

6577

1ST STORY of Level 1 printed in FULL format.

The Associated Press

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May 5, 1995, Friday, PM cycle

SECTION: Washington Dateline

LENGTH: 1143 words

HEADLINE: Confidential Whitewater Depositions Used With Witnesses

BYLINE: By RICHARD KEIL, Associated Press Writers

DATELINE: WASHINGTON

BODY:
JOHN SOLOMON

Preparing for televised Whitewater hearings last summer, White House attorneys consulted confidential depositions from a Treasury investigation in an effort to reconcile differing accounts of administration officials who were about to testify.

Former White House counsel Lloyd Cutler acknowledged this week that the depositions were used to identify discrepancies in the recollections of presidential aides before the congressional hearings.

White House lawyers would then "confront" the aides with information they had obtained from the depositions without revealing the sources, he told The Associated Press.

"If we found inconsistencies, we would go back to White House officials, and go back over testimony they gave us," Cutler explained. "And then we would say 'we have heard other reports.'

"I think it was perfectly appropriate to say that 'this is your testimony to us. There is conflicting testimony. Are you sure that's what you said?"' Cutler said.

He said White House lawyers did not show the depositions to administration witnesses, or make specific references, and thus did not violate a confidentiality agreement with the Treasury Department.

The depositions consisted of interviews with White House and Treasury Department officials from a Treasury inspector general's ethics investigation. That probe reviewed the propriety of administration contacts about a savings and loan investigation that touched on President and Mrs. Clinton's Whitewater land investment.

In order to obtain the documents while the ethics probe was still under way, Cutler had agreed that none of the material would be shared with witnesses.

During last summer's Whitewater hearings, then-Treasury Secretary Lloyd Bentsen was questioned under oath by Sen. Christopher Bond, R-Mo., as to whether the depositions could have allowed witnesses to "tailor the facts" in their testimony.

Bentsen assured otherwise, noting that Cutler was a "man of integrity" and "an expert on the question of ethics."

"I also said to him (Cutler), I want to be sure that this is not shared with the witnesses, that this is for your office and your staff. And he assured me that this is the way it would be handled," Bentsen testified.

One top White House official, deputy chief of staff Harold Ickes, has been accused by Senate Republicans of changing his testimony, a matter they referred to the Whitewater prosecutor.

In a brief interview, Bentsen said last week he couldn't recall something as specific as the details surrounding the depositions. "I'd have to back into the files but I don't remember anything like that," he said.

Cutler, when asked whether he thought he might have influenced witnesses' congressional testimony, told AP: "We were certainly trying to influence them, that is influence them to tell the truth as best they knew it."

He said the use of the depositions was "entirely consistent" with the confidentiality agreement. "I didn't show them the paper, and I did not reveal the contents of the paper," he emphasized.

"Let's assume that we said someone else has a different recollection. What is wrong with that? That is not saying X testified so and so. It is a way of trying to refresh the memory of the individual," he said.

Nonetheless, Jim Wilson, a former Bush administration Justice Department official who assisted the Senate Republicans' Whitewater investigation last year, said the process contradicted Cutler's and Bentsen's assurances.

"The point of the representation (at the hearings) was that this material wasn't used in the way Lloyd Cutler is now saying it was used," Wilson said.

The ethics probe, conducted by the Treasury inspector general and Office of Government Ethics, said the Clinton administration was not guilty of any illegal or unethical conduct in the Whitewater affair.

When it was revealed last summer that Treasury had provided the depositions to the White House, some congressional Republicans alleged the independent investigation had been breached.

To quiet the furor, Clinton administration officials assured Congress that the depositions were used "solely" to prepare Cutler for his testimony before Congress. At the president's request, Cutler had completed his own review of White House discussions regarding Whitewater with Treasury officials, and Cutler led off the hearings with testimony about his findings.

Cutler obtained the depositions July 23, 1994, three days before the congressional hearings began. The cover letter stated explicitly that there

was an agreement that the documents should "not be disclosed publicly or shown to individuals (other than Mr. Cutler) who may be called as witnesses."

Cutler defended the decision to use the depositions to identify conflicting accounts and confront witnesses, noting it was important for both the president and Congress to know the truth. He noted that the White House did not even begin to prepare witnesses to testify about the contacts until after the Whitewater prosecutor finished his criminal investigation into the matter, concluding no laws were broken.

Helping to prepare witnesses to explain discrepancies was not wrong because "Congress is not a criminal jurisdiction," but rather a fact-finding body, he said.

"They (witnesses) were in a position that they could not possibly change their testimony. They had already been under oath before Senate investigators, before .... the grand jury and the Treasury inspector general," Cutler said.

White House officials declined to say whether Ickes was among those confronted about discrepancies, and Ickes didn't return phone calls.

Ickes did change his testimony before Congress, explaining that when he gave his original account to Senate investigators he was not allowed to review his notes.

Cutler, who left his temporary White House job last fall to return to private practice, said he couldn't recall which witnesses he and his staff confronted. But he said the Ickes discrepancy would be an example of the type of thing his office might try to reconcile.

In a July 24, 1994, deposition to the Senate, Ickes gave an account of a Whitewater-related meeting at the White House between presidential aides and Treasury regulators the previous February. He said the discussion centered on there being insufficient time - because of an upcoming statute of limitations deadline - to file any lawsuits in a savings and loan probe that involved President and Mrs. Clinton and their Whitewater land investment.

Two weeks later in the congressional hearings, Ickes said the meeting's participants actually discussed the filing of a protective lawsuit that would allow the investigation to continue after the deadline. In the interim, Cutler had received the Treasury depositions, which included other witnesses' accounts of what happened at the February meeting.

LANGUAGE: ENGLISH

LOAD-DATE: May 5, 1995

Statement on access to depositions by White House counsel

Mr. Cutler and Treasury's Inspector General could only begin their parallel investigations once Mr. Fiske concluded his investigations of the same subject; they knew at that point that their investigations needed to be completed before Congressional hearings into the same subjects began on July 26. As Mr. Cutler was preparing to testify before the House Banking committee on Tuesday, July 26, he wanted to be sure that his investigation was as thorough as possible. He had not interviewed witnesses under oath and had interviewed only four of the Treasury and none of the RTC witnesses. His interviews were not transcribed. It was important to the reliability of his work that it be based on the testimony of all those involved. He sought from Treasury copies of the transcripts of the sworn depositions that the Inspector General had conducted.

I thought that Mr. Cutler's objective was appropriate, and, once the Inspectors General believed they had concluded all their interviews, I believed that we could and should support it. (It later turned out that on July 24, the day after we gave IG transcripts to Mr. Cutler, OGE asked that Mr. Ludwig be interviewed. That was done, but it did not lead to additional questions for any of the other witnesses who already had been interviewed.) Mr. Cutler assured us that the transcripts would be shown only to the White House attorneys working on his investigation and, specifically, that they would not be shown to the witnesses. Mr. Cutler is a man of integrity and I am completely confident that he has abided by those conditions.

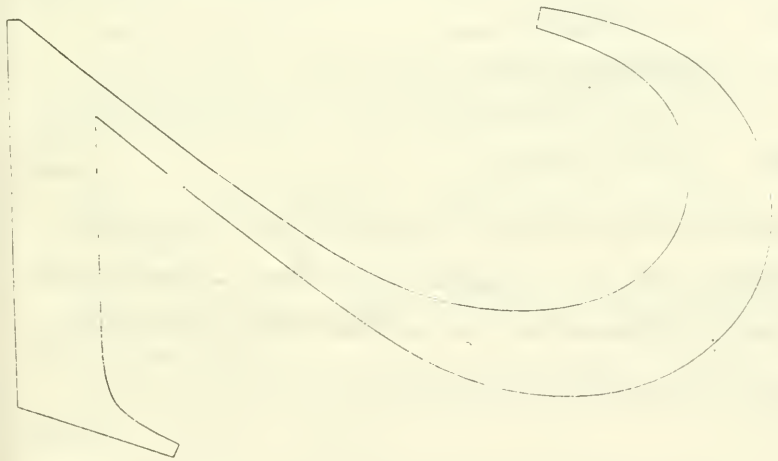
I should point out that the investigation conducted by Treasury's Inspector General required access to the relevant White House documents; Mr. Cutler's office arranged for us to have that access on July 6.

Statement on access to IG transcripts by witnesses

The Department's view of these oversight hearings is that Treasury witnesses are being asked to testify about actions they took to further government interests, actions in their official capacities. The Department's normal practice in such hearings is to avoid having Executive branch witnesses surprise each other; such hearings are not intended to be exercises in "gotcha."

For quite some time, we acceded to successive requests by the Inspector General and the Senate investigators that witnesses in these investigations not be informed of other witnesses' testimony and not be shown documents originating outside their own offices. We didn't have to accede to that Senate request, but we did.

However, once both the Senate and the Inspector General had completed their sworn depositions, and the witnesses' testimony had been taken under oath, we no longer felt it was appropriate for the Executive branch's witnesses not to be aware of each others' recollections. At that point, commencing on July 25, we gave counsel for each of the Treasury witnesses copies of all the transcripts of depositions of witnesses other than those working at the RTC. The RTC witnesses deposition transcripts were not made available until July 30, last Saturday.



JUL-25-94 MON 12:56

PRIVILEGED

P.01

RE: 94-0005

Document Index No. 31



DEPARTMENT OF THE TREASURY
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS
1201 CONSTITUTION AVENUE, N.W.
WASHINGTON, D.C. 20220
Telephone 202/927-5260
FAX 202/927-5421

FAX Transmittal Cover Sheet
Number of Pages: 3

DATE: 7/25/94

TO: CLARK BIGHT

FROM: JIM COTTOS

COMMENTS/SPECIAL INSTRUCTIONS: Questions and Suggested changes to our report by the Secretary's "review team" - to be discussed tomorrow

02473

PRIVILEGED

Page 1

Add New paragraph March 1993 "Roelle stated that he advised Roger Altman the first day he became RTC CEO about the first referral filed regarding Madison in October 1992 and that it mentioned the Clintons. (Roelle, pg. 16). He stated that he briefed Casey (the prior CEO) about the October 1992 referral and that this briefing was routine. (Id. pg. 13). He stated that it was RTC policy and his responsibility to inform the CEO of any high profile referral and he had done so with prior CEOs (Id. 14-15)

After para. 1, add "Dudine asked Kansas City staff to forward the referrals to him and he received them on September 4. (Dudine, pg. 23)"

Page 2

Page 3

Page 4

Page 5

Para. 1. add "or speaking with the Secretary. She also does not recall receiving any response to her memo." Revise cite to (Hanson (1), pg.59; Hanson (1), pgs. 70-71, Hanson (2), pg. 51).

Para. 3. First line, change "the" Early Bird to "an".

Para. 5. Revise last sentence to read "Hanson stated that she didn't recall if she conveyed this information to Altman, although she would have in the ordinary course." Revise cite to pg. 75 to pg. 74.

Page 6

Para. 5. First sentence: delete "to meet with Devore"

Page 7

Para. 7. Revise to "Devore stated that the purpose of the WH meeting was to advise the White House of Gerth's inquiry. (Devore, pgs 16-17)"

Para. 8. Add Hanson's statement that it seemed clear to her that the existence of the referrals was already in the hands of the press. (Hanson (1) pg. 81)

02486

After para. 9. Add "Hanson reported she had a vague recollection that there was a discussion relating to checks but

PRIVILEGED

Page 8

Para. 1, fourth line. Add the word "to" between prior and her.

Para. 2, end of 3d line delete "criminal referrals and" replace them with "the criminal referrals."

Para. 4, add "Gerth's mention of" before "the criminal referrals"

Para. 6 revise 3rd line to read "he shared a legal opinion on the nine criminal matters." John Bowman states that he does not recall seeing the memo (Bowman, pg. 11). Jean Hanson does not recall seeing the memo (Hanson (1), pg. 133).

Page 9

Para. 5. Add at end "and that he wanted to tell the White House."

Page 10

Para 1. Add at end "but he believes he did not."

Para. 7. Add at end of second sentence: "but cautioned that the last bullet about recusal should not be included if Altman had not decided to recuse himself."

Page 11

Para. 2. Fifth line, after Congress add "and the media,"

Para. 3. [or after] add: Ms. Hanson recalled that Mr. Nussbaum said that if Mr. Altman were to stay in the process and not recuse himself there would be discipline imposed on the process to produce a thorough and fair result and that Ms. Williams asked if the investigation could be completed by the end of February. (Hanson (1) pg. 174)

Page 12

Para. 7. Delete first sentence.

Para. 8. Change the date in the first sentence from "10/14/93" to "2/2/94."

Para. 9 add "probably" before subsequently on 1st line.

Page 13

Para. 2. Last sentence does not refer to document discussed in first sentence but rather to the Leach 3 page letter with the

02491

PRIVILEGED

Page 14

Para. 9 Lines 4 and 5, delete "my general opinion at that time was"

Page 15

Para. 4. Line 3 revise to read "that Altman should not be quite so definitive about announcing his" Line 4, after CEO add "at the end of his term but it was his decision."

Page 16

Para. 5. Revise to read "Eggleston stated that he called Hanson to ask if it was true that Jay Stephens was a lawyer at the law firm of Pillsbury, Madison and Sutro and she did not answer the question."

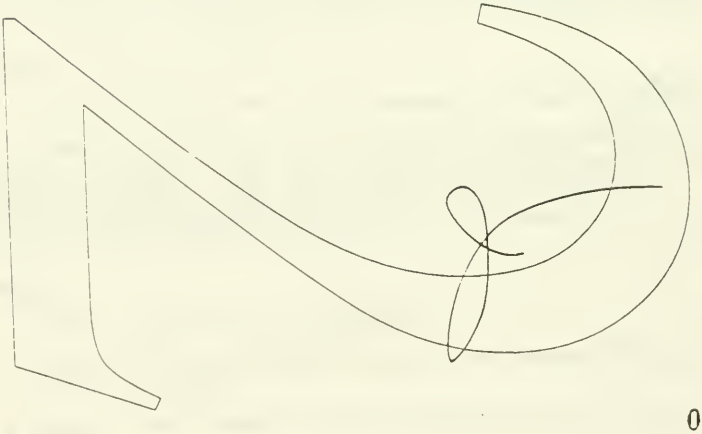
Page 17

Para. 1 delete "regarding the recusal" and replace with "explaining his recusal decision." Revise cite to pgs. 51-52.

02482

Helms says:

(1) Ed says to go ahead and permit the White House to send their Q + As to the Hill. Ed has decided not to raise the Secretary's anxiety level about the Cutler call. So no more hold.



011803

CONFIDENTIAL

Dept: COUNSEL
Tel No: (202) 622-1090

TO: James Cottos (COTTOS)

CC: Robert Cesca (CESCA)

Subject: RE: Written Questions from Senator Bond re: Madison

Jim,

As we discussed on the phone, I'm not aware of any White House violation of the Department's agreement. Sorry if there was any confusion on that point.

Francine

11/19/99

DEPARTMENT OF THE TREASURY
WASHINGTON D.C. 20220

JUN 27 1994

MEMORANDUM FOR JEAN E. HANSON
GENERAL COUNSEL

FROM: ROBERT P. CESCA
DEPUTY INSPECTOR GENERAL

SUBJECT: Provision of Legal Advice and Services to OIG

As you know, the Inspector General has been requested to carry out an investigation into communications between Treasury employees and White House staff concerning the collapse of Madison Guaranty Savings and Loan, and related matters. It is important that the Office of Counsel to the Inspector General, headed by Francine Kerner, continue to provide independent legal advice and services during the course of the investigation.

Given the nature of the inquiry, we have therefore agreed that Ms. Kerner and members of her staff will report solely to the Inspector General on any matters relating to the investigation. Neither Ms. Kerner nor her staff will communicate any information about the substance of this inquiry without specific authorization from the Inspector General.

In addition, a separate job element, concerning the provision of legal advice and services in connection with this specific investigation, will be added to Ms. Kerner's performance standards for rating periods July 1, 1993 through June 30, 1994, and July 1, 1994 through June 30, 1995. The determination on relative job significance and job element performance for this job element will be at the sole discretion of the Inspector General. Moreover, we have agreed that the overall rating of Ms. Kerner's performance in each of these rating periods will need to receive the concurrence of the Inspector General.

By taking these steps, the agency will help allay any misperception that legal advice and services are being affected by people whose activities may be subject to review. Should you have any questions concerning this arrangement, please feel free to call me directly.

cc: Dennis I. Foreman
Francine J. Kerner

10730

6890

OFFICE OF
INSPECTOR
GENERAL

July 1, 1994

Mr. Lloyd Cutler
Counsel to the President
The White House, Room 2/WW
Washington, D.C. 20500

Dear Mr. Cutler:

As you may be aware, Secretary of the Treasury and Chairman of the Thrift Depositor Protection Oversight Board, Lloyd Bentsen, requested the U.S. Office of Government Ethics to investigate and issue an opinion on any possible violations of Federal ethics provisions relating to briefings or discussions concerning Madison Guaranty Savings and Loan or related matters. These briefings or discussions involved White House personnel and officials of the Department of the Treasury and the Resolution Trust Corporation (RTC). The Office of Government Ethics, which has no investigative arm, has asked our offices to conduct the investigation, and we have initiated the investigation.

It is our understanding that President Clinton has designated you as the White House official responsible for coordinating requests for assistance concerning Madison inquiries. Accordingly, pursuant to § 6(a)(3) of the Inspector General Act of 1978 (5 U.S.C. App. 3) we are requesting that you make available for interview any White House personnel who were involved in the briefings or discussions. We would like to schedule the interviews between July 7, 1994 and July 11, 1994. In addition, we are requesting access to any documentation concerning the briefings or discussions as well as copies of any Treasury or RTC documents that may have been provided to White House personnel in connection with such briefings or discussions.

Please advise us at your earliest convenience whether the White House will make these personnel and documents available to us. Thank you for your cooperation.

Sincerely,

015592

for Steven A. Switzer
John J. Adair
Inspector General
Resolution Trust Corporation
202 008 7800

/Robert/ Cesca
Robert P. Cesca
Acting Inspector General
Department of the Treasury
202 622 1090

DEPARTMENT OF THE TREASURY
WASHINGTON D.C. 20220

BY HAND

Jane Sherburn, Esquire
Office of the White House Counsel
The White House
Washington, D.C.

Dear Jane:

Enclosed are copies of the transcripts of all but one of the interviews conducted by the Treasury Inspector General as part of his investigation into contacts between Treasury and White House officials concerning Madison Guaranty. We have not yet received the transcript of the interview of Mr. McLarty.

As we discussed, these transcripts are being provided to you solely to assist you in the preparation for Mr. Cutler's testimony before the House and Senate Banking Committee hearings. You have agreed that the transcripts we are providing to you with this letter will not be disclosed publicly or shown to individuals (other than Mr. Cutler) who may be called as witnesses by either Committee until such time as we advise you that this restriction is no longer necessary. Similarly, you have agreed not to disclose these transcripts to counsel for any such individuals. Please let me know immediately if my understanding of our agreement is not correct.

Sincerely,

Stephen J. McHale
Deputy Assistant General Counsel
(Administrative & General Law)

DEPOSITION OF JOSEPH E. GANGLOFF
IN RE: S. RES. 120

FRIDAY, OCTOBER 13, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of JOSEPH E. GANGLOFF, called for examination pursuant to notice of deposition, at 10:25 a.m. in Room 534 of the Dirksen Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., ESQ.
Majority Chief Counsel
ALICE S. FISHER, ESQ.
Majority Deputy Special Counsel
LOUIS J. GICALE, ESQ.
Majority Deputy Special Counsel
RICHARD BEN-VENISTE, ESQ.
Minority Special Counsel
NEAL E. KRAVITZ, ESQ.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CHARLES J. SGRO, ESQ.
Special Assistant to the Deputy Attorney General
U.S. Department of Justice
Tenth Street & Constitution Avenue, NW
Washington, DC 20530
On behalf of the Deponent.

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EXHIBITS

Joseph E. Gangloff

DEPOSITION NUMBER	IDENTIFIED
Gangloff Exhibits 1 and 2	10, 1272

3

PROCEEDINGS

MR. FISHER: Good morning. My name is Alice Fisher. I'm Associate Special Counsel to the Special Committee.

To my left is Neal Kravitz who is Principal Deputy, Democratic Special Counsel.

MR. KRAVITZ: He's got my card.

MR. FISHER: And to my right is Bob Giuffra, who is Chief Counsel to the Banking Committee.

This deposition is being conducted pursuant to Senate Resolution 120. This resolution establishes a Special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority and other related matters.

Section 1(b)2(c) of Senate Resolution 120 authorizes an investigation and public hearings into whether the Department of Justice improperly handled RTC criminal referrals relating to Madison Guaranty

4

Savings & Loan Association or Whitewater Development Corporation, and this will be the focus of today's deposition.

I believe you were requested to testify on October 5, 1995.

MR. GANGLOFF: To testify where?

MR. FISHER: Here today.

MR. GANGLOFF: I'm here today. I was requested to be here.

MR. FISHER: This deposition is in advance of public hearing which may be held in November. It is unclear at this time whether you will be called to testify at that hearing.

I will ask a series of questions and ask you to testify under oath. If you don't understand a question, please let me know and I'll rephrase it. If you need a break, let me know.

If you are called to testify at a public hearing, you will be permitted to have a copy of your deposition transcript in advance of that hearing at some point. You may be represented by counsel.

Objections to the form of the questions

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will be noted for the record. Counsel may object on the grounds of privilege or relevance and the committee chairman may rule on all objections.

Could you swear the witness, please.

Whereupon,

JOSEPH E. GANGLOFF

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FISHER:

Q Could you state your name for the record.

A Joseph Edward Gangloff.

Q Your present business --

A Before we start, I want to note that I have never seen resolution 120 before. I don't know what it authorizes you to do, but I am curious whether that is the source of placing me under oath for today's proceedings.

Q Yes, it is. Would you like a chance to review it at that point?

6

A No, as long as that authorizes you to place me under oath for the deposition, that's all.

Q Do you want me to point it out to you?

A No.

Q Could you state your present business address.

A My office is located at 1400 New York Avenue on the 12th floor.

Q And your present position?

A Principal deputy chief of the public integrity section of the criminal division.

Q Could you give me a little background on your employment history?

A I was graduated from the University of Pennsylvania law school in 1977 and shortly thereafter went to work pursuant to the honors program in the Department of Justice for the antitrust division. I worked in the special regulated industry section for approximately three years.

In December of 1980 approximately, I was offered a job in the public integrity section. I

7

joined the public integrity section in January of 1981 where I've been continuously employed up until today, and I hope for some future time. I joined as a trial attorney.

In approximately 1987 I became the director of the conflicts of interest crimes branch and I've held a number of supervisory positions since that time, culminating in my present position.

Q During the period between September 1992 and November 1993, did you have a specific title?

A I served as acting chief, actually, for a period of time. It's a little bit confusing because of some changes that we had in staffing as far as what the title was and what the responsibilities were.

There was a period in March of 1992 when there was a major reorganization of our section. And shortly after that, sometime in the springtime, we got a new chief, but he was largely absent. So in, I believe, April of 1993 I became acting chief and was acting chief through sometime in March of 1994. And these dates are discussed in the House deposition

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that I believe you have a copy of.

And I also discussed this material and the same information that I think we're going to discuss today with the Independent Counsel. And I may also have discussed it with our own office of professional responsibility. I don't know.

To the extent that inconsistencies arise, I expect that some minor inconsistencies, in fact, will arise, and I will also point out in the various forums in which I've addressed these issues, I've had varying amounts of material provided to me in terms of refreshing my recollection.

So for example, when the Independent Counsel talked to me, not only were documents shown to me in advance of questions, but an FBI agent was present to put certain things into context to jog my memory, and to the same extent when I was deposed by the House counsel, we from time to time went back to records and that jogged my memory. So obviously, both of those events and possibly an OPR interview was more contemporaneous to the events at issue than today's deposition.

9

Q That's the deposition that you provided to the House Banking Committee and financial services on September 29th of this year, 1995?

A Again, the date, I'll take your word for it, but I did submit to a deposition by them in the recent past, and you're showing me now a copy of what appears to be a deposition of Joseph Edward Gangloff dated September 29, 1995. That's consistent with my recollection as to the timing.

Q Have you had a chance to review your transcript?

A I saw it late afternoon and briefly perused it while I was attending to other duties as well.

Q Do you believe your testimony given there was true and accurate?

A The testimony I gave that day was true and accurate to the best of my abilities.

However, I did note in the transcript that there are some transcription errors with respect to names of -- particularly, JoAnn Farrington is reported as Joan Farrington, and I did notice transcription errors, for example, saying "experience

10

of conflict" instead of saying "appearance of conflict." I also believe that certain choices were made by the court reporter with respect to what entries were recorded when on occasion people may have spoken more than one at a time.

So with those qualifications, from my standpoint, everything I said was as accurate as I could make it at the time.

MR. FISHER: Thank you. I'd like to at this time make this Exhibit 1, and we will also reserve for Exhibit 2 a place for an errata sheet in the event that Mr. Gangloff would like to present an errata sheet to go along with the House Banking testimony.

(Gangloff Exhibits 1 and 2 identified.)

BY MR. FISHER:

Q Could you tell me, Mr. Gangloff, who was the chief in 1992 up until April 1993 when you became acting chief?

A Well, ask me that question again.

Q You mentioned previously that there was a

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chief of the section in 199 --
A You could figure this out more accurately with respect to documents that I'm sure the department would provide to you that would give you actual personnel assignments. But my general recollection is that in March of 1992, Jerry McDowell, who had been the chief for approximately a dozen years or more -- actually more -- was transferred to the fraud section as chief. And that Lee J. Radek who at that time was the principal deputy, was transferred to the asset forfeiture section as the chief.
One of the deputies, Jim Cole, was largely on the road traveling on some cases that he was handling. And there was one other deputy, Bill Keefer. At the time -- on the time that McDowell was reassigned, Bill Keefer became the acting chief, and I began to serve as his acting deputy.
Shortly thereafter, Jim Cole left the department and Bill Keefer left the department and Michael Shepherd -- Michael J. Shepherd was hired as the chief. He was from the United States Attorney's

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office in Chicago and had continuing business in Chicago.
So in approximately sometime in the -- as I recall, the spring or early summer -- probably the early summer because I recall having canceled a vacation shortly after he came on board, he became the chief and I was the deputy -- or acting deputy.
JoAnn Farrington, who had previously been a special assistant to the chief, was out on maternity leave during this period. So essentially, we went from -- you can count the numbers, but five supervisors or 5-1/2 supervisors to 1-1/2 -- or two, I suppose, and we also have a director of the conflicts of interest -- or the election crimes branch who was there, but his duties are sufficiently distinct, but they really don't overlap with other things.
Basically, we went from having five people to having two people to do those jobs. And a short time afterwards, JoAnn Farrington, who had actually left the section, was rehired as a part-time deputy chief. So she and I were there when Mike Shepherd --

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Mike Shepherd was continuing a case he was involved in in Chicago and frequently absent from the office. During those periods of time, I was acting chief.

Then in -- I think April 1st or April 4th of 1993, Mike Shepherd went to Chicago as the acting or the interim United States Attorney with an intention, as I believe, to return to the section. So I was the acting chief. And then sometime in the fall of 1993, he announced that he was not going to be returning to the section.

And so I continued on as acting chief until the following year, and that brought us up to about March of '94 when Lee Radek returned from the asset forfeiture section as chief, and I assumed the position of principal deputy chief.

Q Thank you. Could you explain for me or give me a description of the public integrity section's responsibilities, what their roles were, their activities.

A Well, we file an annual report with Congress that sets forth in some detail, not only what we've done in the previous year, but also the

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general range of our responsibilities, and I will attempt to describe them to you now, but it's actually in its broadest terms, we have a wide range of responsibilities dealing with public corruption matters throughout the country.

We deal specifically with the initial referrals on all Independent Counsel matters. We have a conflicts of interest crimes branch. We have an election crimes branch. We handle particularly sensitive cases that are venued any place in the country. The easiest way to say what we do in a nutshell is to probably mention the fact -- when the diaries case came to us, when Senator Durenberger's case came to us and when the travel White House issue came to us and the Clinton passport file came to us.

We basically have responsibilities in I suppose three major areas. One is specific cases. One is aiding and advising people in the field and supplying person power when that's required, or personnel power. And the other is we have a fairly active degree of involvement in a wide range of matters, including legislative matters and things

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like executive orders which impact on the work we do.

We sometimes get consulted with respect to international treaties and the language in there that relates to public corruption, and we maintain a network of contacts with both the Independent Counsel community, the ethics community, principally through the Office of Government Ethics and we have many levels of contact with the Federal Bureau of Investigation.

Our case load consists of largely cases that are brought to us by the Inspectors General and we handle a large number of recusal matters. And different administrations have different policies and views with respect to the appropriate handling of recusals in terms of whether they're handled ordinarily from main Justice or by another United States Attorney's office other than the one that ends up being recused. Depending on what practice is in place at a particular time, our case load, as it's made up of recusals, rises and falls proportionately.

Q Generally, if you can tell me, what are the

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standards for recusal of a U.S. Attorney, and I understand that it's very fact-specific, but if you could give me a general explanation of the specifics.

A It's largely to avoid the appearances of impropriety which in many areas of criminal prosecution are important -- more important actually than the actual outcome. Essentially, the reasons for recusal may involve -- and this is set forth incidentally in our annual report to some extent, but it includes such things as past personal, political or financial relationships involving the United States Attorney and the subject of an investigation.

There's sometimes a distinction made between whether a United States Attorney personally or the United States Attorney staff recuses. There are situations in which a United States Attorney is recused and either no acting United States Attorney is named at all, and the matter is handled exclusively from Washington, or there are times when the Assistant Attorney General for the criminal division or particular section chief can be named

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acting Attorney General for purposes of a particular case.

In those situations, the case may be staffed exclusively out of Washington, exclusively out of the U.S. Attorney's office with supervisory assistance from Washington or a combination of factors.

Generally, you're quite correct in saying that it's fact-specific, but I could at least say in terms of guidelines, and this is discussed in my testimony before the House, but generally in terms of guidelines, it may be easiest to juxtapose some notions of what's required for recusal as opposed to our actual practice.

And it sort of comes like this: In our mind, the need to recuse is not at all result-specific. In our minds, those in the field sometimes see it as either a comment on the individual subject of an investigation or their own competence to handle an investigation that main Justice thinks recusal is appropriate.

For example -- and a layperson may think

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this as well -- if I begin down the road with an investigation and recuse because I know subject X, that must mean that subject X did something wrong. Our view is not that at all. Our view is that once subject X becomes a significant part of the case, then you look at a time line and you say when in that time line would a recusal be appropriate, and we tend to say it would be appropriate right now because it's very unusual that you can undertake steps in an investigation that will not subsequently impact on future steps of an investigation.

That's the reason why, for example, in the Independent Counsel's statute the department can't issue subpoenas and can't give immunities because of the recognition of that. So if you begin down the line, whether you decide to go forward or not go forward, you've always got the problem that an event will be identified as the trigger.

So what will then come out is that it must be because X did something wrong or it must be because Y is handling the matter incompetently. And to follow it through to its conclusion, even if

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somebody who has a perceived conflict follows through with a particular case and reaches a conclusion in the case, prosecutes the case, you still have the problem that within any prosecutive structure but certainly my familiarities with the federal structure, you make many, many decisions as to the nature of the charges, and they can have different consequences in terms of how the offense is perceived by the public as well as what the actual sentence is.

And often arrangements are made that benefit one defendant because another defendant has been identified as a more worthy target of the investigation or is more culpable. So if there is to be a perceived conflict, it basically has -- the department knew this long before I joined, but certainly from my own experience in the department, it's quite apparent as you trace that time line down, you see that once you've identified an appearance of a conflict, you know all you need to believe that a recusal is necessary or should be seriously considered and weighed.

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Generally, what I'm saying, we don't look to say how likely is this to come out, do we think the person can really be independent. If a United States Attorney has recently been appointed or is an interim hoping for permanent appointment or is a holdover hoping not to get the axe or, you know, for any number of reasons, maybe he was going to run for another political position -- as I say, it's totally fact-specific. But the general message I want to get across is it's one that errs very much on the side of the appearance standard, tries to maintain to the best of our ability the appearance as well as the reality, impartiality and all decisions made by the department.

Q Are these standards or guidelines that you've just expressed sent to the U.S. Attorneys offices in the field in some form, in a manual or --

A I don't know. The Executive Office for the United States Attorneys acts as the principal liaison between the United States Attorneys and the Department of Justice. These are the kinds of issues that if you have 94 United States Attorneys, you're

talking about something that may throughout the careers of the United States Attorneys affect fewer than 5 percent of them. At least from my perspective, the cases we see in the public corruption are civil rights and civil as well but at least in the public corruption area.

I know that there are some training events that take place for new United States Attorneys, and I think it's one that fosters cooperativeness, et cetera. I doubt that they're seriously lectured at that time about getting out of cases when, in fact, they're just trying to get into the system, and they are very powerful individuals in the law enforcement process and in the recusal thing is somewhat unusual, but as I say, it makes sense.

But the explanation of it -- again, it's one of those things also where I suspect -- this is my speculation for what it's worth -- if you're a United States Attorney coming on board, some have no criminal experience, some have no civil experience, some have no government experience, you're probably listening to an awful lot of instruction and

guidance, so that the thing that's foremost in your mind is probably not the minutia of something to do, if something happens concerning somebody who now isn't even identified.

I don't think there's a mystery to it. I think sometimes there's a little difference of thought on first blush as to what a standard should be, but I don't think there's any lack of uniformity in the way it's applied.

Q Would it be the usual case for a U.S. Attorney in the field to call the executive office of the U.S. Attorneys if a problem like this arose or they had questions, or would it be your section, the public integrity section that they called?

A There's a much larger area where recusals come up but they're much more obvious. That is where there's an allegation against someone in the United States Attorneys office, and that may be anything from drug usage by somebody on the staff to time and attendance fraud by somebody on the staff.

And by the way, we handled most federal judge cases for these same kinds of reasons. So in

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those situations -- and we have different relationships with different United States Attorneys, so some of them we know personally and by sight and we've known for years or we've been out and lectured to them, and they may call us and say this is the situation. Should we be out of this or what? How should we handle it? And we'll often say send it to -- or call EOUSA and iron out the paperwork.

Generally one thing we try to do is get a document that it's a recusal because we have had experiences in the past, not really I can recall on a significant matter, but you can very well guess where somebody recuses, it doesn't quite register with them.

That means that they're pretty much out of the loop in the decisionmaking and the decisions don't go the way they expected them to go. And then they try to reinsert themselves and it's always nicer to say well, thank you for your opinion, but you are recused. And yes, we are applying a national standard now, and the mere fact that in your district you may say we don't prosecute people who don't have

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less than X value of marijuana in their possession, this was your own employee and that person had less than that amount. And you may argue they shouldn't be prosecuted but for the fact they worked for the Department of Justice, they would and we declined. The response would be in fact, the person does work for the Department of Justice. We have the case and you don't.

So we try to remain cordial, but a recusal has consequences, and we try to document that.

Q Earlier, you had mentioned that upon a recusal, sometimes the staff as well would be recused, sometimes not. And I think you gave some other alternatives. For example, sometimes the assisting Attorney General would name someone to be acting.

Could you explain to me what the different factors would be to make that go one way or the other, if there's any general rule when a staff --

A No, I really can't, because it deals with -- I think that really deals with the personality of a particular Assistant Attorney

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General and probably deals with how long they've had tenure. It probably deals with how many come in during that tenure. If one comes in and somebody thinks it's a good idea, I'll make myself acting and people can report it to me, and they end up with 15 of those things, it's too much.

I certainly think it might deal with the sensitivity of the particular issue, certainly the Attorney General, whoever that may be, may indicate a specific interest in the matter. That would be one where the AAG would be more likely to stay personally involved than one which was one of these time and attendance kind of things.

I wouldn't expect to see -- in those cases, in fact, I wouldn't even expect to see an acting United States Attorney when their employees are pretty much handled by the sections involved.

Q What would be some reasons that the staff would not be recused, although the U.S. Attorney would be recused?

A Well, if you had -- one reason, I suppose, would be if you had a career staffer who was handling

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a very complex investigation and somebody was appointed who had recent -- maybe came from a law firm which was involved in the investigation in some way, maybe representing some of the clients even. Or maybe there was a subject of the investigation who was employed by the law firm or who had been a client at the law firm or maybe it's an investigation of somebody who was politically very close to the new appointee.

In those situations, you're looking at things from a practical standpoint, like how much is it in terms of resources, but you're also looking at appearance and the success which something can be isolated under those circumstances and depending on the nature of the case, nature of the evidence, witnesses as opposed to documentary evidence.

You can make different determinations as to how successful in reality it would be to simply not have the United States participate in the case. We have cases in my office which right now my chief is recused and that I handle and there may be some still going on because I wouldn't know, but I know there

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have been cases in the past from which I have been recused.

Q Thank you. Moving to another topic, could you tell me about what time or approximately what time you became aware of the issues surrounding the investigation relating to David Hale?

A No, I can't. I said this in my House transcript as well. My job is very issues oriented. The chronology of things makes very little difference to me and most, except for of late, when the FBI, the White House, OPR and Congress have been interested in my various activities, from the standpoint of doing my job, the issue is generally there and resolved very quickly and either moves and evolves and becomes a new issue or is completed.

So to me, I know that at a particular time, I became involved and had knowledge of the Hale allegations. But I don't really know, and I know you have some experience with urgent reports probably by now that supposedly brief the Attorney General on some of the most sensitive issues in the department.

I remember another matter which I gave a

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statement to somebody. They were asking about a particular urgent that was done on a particular day and thought I should remember that but that one day had three urgents in it, when you couple that with the fact, as I noted, we were severely short-staffed in terms of management people -- I guess I do remember at the time that Mike Shepherd was -- my recollection would be that he was not there, that JoAnn Farrington was there as part-time deputy, so I was the acting chief and she was the part-time deputy.

Maybe he was coming in full-time at the time, but the point is that's the number of people who were there. But the other point is I knew about it at some time around when you think I knew about it.

Q I believe you testified in the House, and we have some notes I'll show you, that you attended a meeting on September 20th in Jack Keeney's office regarding some of the allegations surrounding the Hale investigation?

A Right, correctly from my notebook, the

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September 20th date and the indication as to who was present.

Q As of that time, do you recall what prior knowledge you had relating to the substance of the David Hale investigation?

A No, not with any accuracy. I had some knowledge of it, but I frequently would have been in Keeney's office, and Jerry McDowell is somebody who I see almost every day or did at that time, and I would go to Mr. Keeney's office quite frequently as well. It's not like there's something that jumps out. The meeting I talked about then -- I wasn't positive that was the meeting -- was one involving Irv Nathan. I'm not even sure of that.

I know, for example, upon my recollection, that in the deposition to the House, I think I mentioned a subsequent meeting that Al Carver was present at and I couldn't recall -- two FBI agents, Wade and I think Dorch, D-o-r-c-h, I couldn't recall them being present in the meeting, but I went on and expounded on what happened at the meeting.

And then afterwards, I realized that that

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couldn't have been that meeting and that, in fact, that was a completely different meeting and that I had actually sat down with Carver at least two times instead of one time.

Q Do you believe that you had conversations about this with Mr. Carver prior to the September 20th meeting?

A I don't think so, because I was not really -- the times that I had -- and this will differ from the last time I talked about this, which was with the House, but I believe the two times I specifically -- I don't really specifically recall this.

One time I specifically recall Carver being involved was at the time when we were drafting a proposed scope for the regulatory special counsel, the scope of authority. And I seem to recall that he may have been -- and this was based as much on the notes that I saw the last time, probably more on that than current recollection, than the time we met with Dorch and Wade and Jane Erickson's name came up -- Jane Erickson was an FBI agent, and still is so far

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as I know -- that that was actually a briefing -- a meeting in Jerry McDowell's office that occurred about the time that it was decided that the fraud section would send attorneys out to Little Rock.

And I'm not quite sure whether it happened before the decision was made or after, but the point was at that time that we were gathering information from the Bureau and Jane Erickson was assigned as the agent to go on site and collect information and I may have completely forgotten that the last time we went through this.

Q Getting back to the meeting on September 20th in Mr. Keeney's office, do you remember what the substance was of the information that you had prior to that meeting?

A I'm sorry --

Q Would you like to see your notes at this time?

A No. I need a refreshment in terms of when Irv Nathan was --

Q Yes.

A I have a --

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Q That's my understanding from your notebook, and I can show you your notebook.

A I definitely did know something about the Hale matter prior to that, and you can read it in greater detail in my House transcript or we can go into greater detail now as you choose.

But essentially, the issue that had arisen was that Hale purported to have some information which in some way involved the President. And his approach was basically that it appeared that the U.S. Attorney's office was going to indict him on some charges relating to SBA fraud, and in that context, his attorney was seeking some concessions from the government in exchange for this information.

But one of the issues that arose was that he wasn't specific. And since he wasn't providing any documentation either, there was a problem of credibility.

And the other issue that came up was the fact that ordinarily an indictment would be a public event, and ordinarily, if someone is going to cooperate, one of the first areas of cooperateation in

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terms of corroboration is to explore the possibility of consensual telephone calls of other people that may have been involved in the activity. If you publicly indict someone, obviously, you have greatly undermined your ability to engage in consensual calls with any effect -- with any good effect.

So the thing about the Irv Nathan meeting that was odd was that this attorney, whose name I believe was Coleman, had had some dealings with the United States Attorney's office up to this point. So far as I knew, it had no direct contact with the Department of Justice, and it appeared that there was some standstill in terms of the United States Attorney's office not giving Hale and his attorney what they wanted, and it was a little bit -- I won't say unusual, but it would not have been unusual had the attorney come directly to Washington to sort of make his pitch, especially on what was purported to be so significant a matter. But he didn't do that.

Instead, what happened was, we met because Irv Nathan had received some information from a source which he initially did not want to identify

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that indicated that either Hale or his attorney had contacted, I believe, The New York Times and started to go forward with this story, which was in many respects an odd thing to do because obviously not only had the person not come to main Justice to try to seek some redress as to what they saw as a standstill, but at the same time, the act of going public on the matter would undermine their ability to successfully cooperate with the investigation. Sort of anybody should have been able to figure that out.

And one of the things that happened around the same time, and I'm not exactly sure whether we knew about it then or a little bit later, was that one of AUSAs in the U.S. Attorney's office who was handling the call got a call from The New York Times that cited some information in the way reporters do, is this accurate or can you tell me more or I'm going to go with this unless you stop me. It was enough to know that the assistant knew there was substance to the fact that somebody had given the reporter some information.

So Irv Nathan wanted to communicate that

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part of the information that showed that Hale's attorney was moving forward -- apparently moving forward in a public forum, that was part of the discussion we had. What that led to was two things.

One, Irv was relatively new to his position at the time and so far as I know, he came forward immediately with this information but had some thought that it might not be necessary for him to disclose the source of his information and I think everyone resolved fairly quickly that he would have to disclose the source of the information.

And an issue that came up in or about this time was the concern that Hale's attorney actually knew that he could come to Washington, that he could have an audience. And again, the timing is not clear in my mind here, but eventually, this evolved into the issue of discussing it with the United States Attorney -- or maybe not even with the United States Attorney, but at least we knew we wanted to be sure that it was communicated to Coleman that he had an opportunity to come to Washington.

And we had some related discussion with

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respect to -- I believe that Irv had some specific information that this source had given him, and I think we discussed the information with a view towards okay, let's assume that this information is correct, putting aside whether it helps or hurts the ability for Hale to cooperate because Hale hasn't given any specific information at that time.

Assuming that that information is correct, is there a crime alleged on the part of the President or anyone other than Hale. And if there's a crime alleged -- sometime along in this discussion came up the issue -- if there's a crime alleged, is my criminal activity within the statute of limitations.

So those issues came up, and shortly thereafter, I believe Mr. Keeney reached out for the United States Attorney -- but I'm not sure on the timing of that -- who was Paula Casey. I'm not sure whether she had actually been confirmed at that time or was about to be confirmed. And I should also say that there was a consensus at the time that the information being provided lacked sufficient specificity and credibility to warrant Justice

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intervention in derailing the Hale investigation.
In other words, I don't remember what the reason was why Hale had to be indicted, whether it was a statute of limitations issue. I just don't remember, but the point was that everybody wanted to say based on this information, we should not be slowing or deviating in the Hale thing, because the way it was coming in -- and I gave some example of it in my House testimony -- it was such a thin allegation that it almost put any potential defendant into a position to be able to drop some significant individual's name in and say I have information on X -- and by the way, this happens.
People call in and I have information on so-and-so and people get arrested and I have information on so-and-so. It wasn't much beyond that. We didn't know a lot about the underlying matter at the time, so part of what was taking place is our finding out what was going on.
Q I'd like to take you through all this slowly but I appreciate you going through it with me. Prior to this meeting where Mr. Nathan discussed

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the Hale allegations from the source -- by the way, did you later learn who the source was?
A I don't remember whether I did or not. I mean, I seem to have a recollection that it was a New York Times reporter, but that's hardly a surprise, given what was being said.
Q Prior to this meeting, what do you recall knowing about these issues -- who do you recall discussing these issues with?
A I don't have a -- as I say, my memory is issue-oriented, so what I know is sometime there was a discussion to find out and whether I personally did it or whether I was present during a speakerphone conversation on some of them, I don't really know.
But the issue was that Hale's attorney said that he had some information and that there was a question as to whether it was criminal, even in its substance. And there was the idea -- there was clearly an issue. I mean, that's the way -- that's the way to look at it. Somebody is about to be indicted and the department from Washington is not involved in.

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We have now become aware of this issue, and I don't remember specifically how we first became aware. It may be a little surprising we didn't become aware earlier. Some U.S. Attorneys offices would have hit an alert button much earlier, I think.

But for whatever reason, we found out when we found out, and then we did the normal things we would do, which was find out what the circumstances were, be sure that Hale's attorney knew he could have an audience if he felt he wasn't being treated properly, explore any options we could undertake in terms of investigatory activities that would include documentary stuff which would not involve Hale's cooperation and which, incidentally, we wouldn't have to tell Hale we were pursuing. Let's take them as serious allegations. What investigative steps would we take. That was the kind of stuff that was occurring at that time.

Q Do you recall whether you had some idea about Mr. Hale's allegations against the President prior to when Mr. Nathan discussed this?

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A Oh, I think I did.

Q Do you have a recollection of how the department got that information?

A I don't have a specific recollection of it.

Q Do you think that it may have been from the field, from the Eastern District of Arkansas, someone from that office?

A It may have been. It may have been. At some time I may have even had a discussion with Fletcher Jackson who was the AUSA handling the matter, but I'm not sure if I had a discussion with him or not. And the kinds of questions we ask are things like what's the hurry? Why is it you feel under pressure to indict at this time? What efforts have been made to get this information at this point. You know, it's along those kind of status kinds of things.

Q Do you recall what efforts had been made to get this information before Mr. Nathan had received this information from this source?

A In terms of chronology, I don't. I seem to think that I knew something because I seem to think

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that the new thing -- I seem to think that the new thing that Nathan provided was the fact that this guy was going to the press, but it may very well be that this was the first time that we were aware of the Hale allegations, that they had risen to that level. I just don't remember.

Q Do you recall whether prior to that meeting, Ms. Casey ever contacted you or anyone in your office?

A No, I don't think prior to that meeting anyone had talked to Casey about it because I think either at that meeting or shortly thereafter -- but it could have been shortly before. It was right around the time she was confirmed. Jack Keeney reached out for her and she was at some conference for new U.S. Attorneys and he tried to get her first assistant and second person as well. And I think he finally ended up contacting her at this conference or she called him back shortly thereafter.

Q Do you know whether prior to the meeting on September 20th, Mr. Keeney had spoken to Ms. Casey's first assistant?

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A I don't have a specific recollection of that.

Q Had you spoken to Ms. Casey's first assistant?

A Are we talking about Fletcher Jackson?

Q Or Michael Johnson.

A I don't know. It could have been one. It could have been the other. I think I talked to one of them at one time, but I don't remember whether it was before or after.

Q Do you recall anything about that conversation, what they may have told you at that time when you talked to them?

A I guess they would have told me to answer the questions they would have asked, and those questions would have been, what do you have on Hale? What does he say? How specific is it? What are the avenues that you've looked at? What could you look at. Those kinds of things.

Q Do you recall seeing any correspondence between the Eastern District of Arkansas U.S. Attorney's office and Mr. Coleman prior to the

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meeting on September 20th?
A Maybe, but this is an appropriate time to say that I've been over some of this stuff so many times and been shown so many documents, that when you say do I recall having been shown it, I have a general recollection of the Independent Counsel's staff showing me correspondence. Whether I saw that correspondence also at an earlier time, today, I don't have a clue.
I think I have a general recollection that at some point there had been correspondence between Coleman and the U.S. Attorney's office that preexisted the department's interest in the matter and that I saw that after the fact, that I saw that during the time period when we wanted to be sure that something would be created that would go to Coleman to make it clear to Coleman that he could have an avenue with the United States Attorneys office -- I mean, with main Justice.
But in terms of seeing some of these things, I have adequate specific recollections for the rest of my life on everything. For your

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purposes, I have adequate recollections with respect to certain incidents that may have arisen, but in terms of this minutia, I just don't have it because there were too many other things that I was caring a lot more about at the time.
Q You mentioned that the department got interested and wanted to make sure that Mr. Coleman knew that the main Justice was available to him?
A Right.
Q Do you recall what was discussed or how that was made clear to Mr. Coleman at that time?
A Oh, I think it was in the context of -- and I'm not sure whether Jack covered this on a speakerphone call, but I think what we did was somebody found out, what have you said to him in the past? Have you made it clear that he has the opportunity to come in and talk to you? And I think the question was, have you made it clear he can come to main Justice? And I think that resulted in the request for copies of the correspondence that had been exchanged. And I seem to think that I saw it, but someone may have told me the general content of

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it -- or it may have been the general content wouldn't have matter.

The point is we were at a place where we wanted to be sure Coleman knew he could come to Washington if he thought he had information that warranted it. So I think even if it had been clear in an earlier correspondence, we probably would have recommended a follow-up correspondence with respect to it, but that's the context in which the issue came up.

Q Would that correspondence have been from a letter signed from the Eastern District of Arkansas U.S. Attorney's office?

A I think that's what was contemplated. Since Coleman wasn't contacting Washington, it wouldn't really be -- at least in my experience, it wouldn't be the normal thing for Washington to suddenly drop something into the process in terms of sending a letter to a defense attorney who hasn't sent anything to Washington and doesn't even know, for all of our purposes, that Washington is even involved or even looking at the thing.

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I think it would have been in the nature of saying give him a follow-up that says that he can go to Washington and have that generated from the U.S. Attorney's office.

Q Do you recall seeing such a follow-up?

A I don't recall having seen it, but I very well may have. You could tell me I wrote it and it might be true.

Q Do you recall what the substance said other than making it clear --

A It probably -- yeah -- you know, these things become sort of formula driven, so if it was written from the outside going in, we understand that you have information concerning X, if you want to do Y, contact so-and-so, if it was from the United States Attorneys office, it would pretty much do the same thing.

It would be the normal standard that it would have an introductory paragraph that's basically on a line do you purport to have this or that, and we want to be sure that you have this, and I see so many of those and write so many of those, that I don't

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have a specific recollection.
Q Would it have been appropriate to give a name or a number to call at main Justice?
A Maybe. Maybe. They could have -- I just don't recall. It could have said --
Q It could have said generally --
A It would have said if we could arrange it, but if we thought there was a problem of somebody saying well, this U.S. Attorney's office is acting in this way inappropriately, I think it probably would have said -- if there is such a letter, I hope by now that you have it and if it doesn't exist, what I'm saying it must sound particularly silly, but I think it would say contact the criminal division and maybe give Keeney's name, although, given the people involved, McDowell's name could have been in it. But I think at this early time, it probably would have been the Keeney level.
Q You mentioned earlier prior to the September 20th meeting, you had general knowledge of Mr. Hale's allegations against the President. Did you have any knowledge of allegations by Mr. Hale

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against any other individuals?
A First of all, the September 20th date we're taking because that seems to be what's in the notes. I don't have a current recollection of it.
Q I'm using it as a reference point.
A And I have some reservation in calling the information we had at that time, even allegations against the President. He purported to have information somehow involving the President, and the nature of it, even as it became more specific, as I recall, there was an issue involving the audit of a bank and they wanted to infuse some funds into the bank, and the best that I can make out -- and this may even have been later when we got more information -- was the suggestion that the President had met with or suggested to someone that they assist in the infusion of the money to the bank or do something like that.
So there's not only the idea, can you corroborate such a meeting occurred; suppose it did? So what? If I go tell you to buy stuff at Woody's at 40 percent off and not wait until 50 percent because

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it's better, so what? Even if you buy a lot of stuff.

Q I didn't mean to mischaracterize it at all.

A I know.

Q Were there any other individuals named in the information that Mr. Hale purported to have and I'm asking for --

A It's rare to see the President's name without the First Lady's name, but whether she was -- I don't recall anything with respect to -- all I remember in specific terms was this thing about -- and it may have supposedly been a particular individual not identified by name, but like a state trooper or a somebody drove him to a meeting. Of course, I may be getting that confused with some other scenario as well.

But my general recollection is, it was just focused on the President and just focused on the involvement in this infusion to bolster the funds of this financial institution for the audit that's coming up.

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Q Moving to the meeting of September 20th, in particular showing you your notes if you'd like, but do you recall who attended that meeting?

A My best recollection is that Jack Keeney was there. I was there. Irv Nathan was there during a middle portion of the meeting and that Jerry McDowell was there.

Q Could you just give me their positions as of that time?

A Well, Keeney was the Deputy Attorney General -- Deputy Assistant Attorney General and for all I recall now, he could have been the acting Assistant Attorney General for the criminal division. I don't know whether JoAnne Harris was in place at that time or not. But McDowell was the chief of the fraud section and as I said, in the past had been chief of the public integrity section. And I was there as the -- I think I was there as acting chief at the time.

And the other thing to keep in mind with respect to all of this, the Independent Counsel was in abeyance during that period of time, so that's

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something that explains public integrity's presence. Basically, it's the Independent Counsel aspect of it because the allegations themselves, related to things in substance, would normally come under the fraud section's jurisdiction, and it was particularly fortunate that Jerry McDowell was central in this because he obviously had substantial experience in both of those areas.

Q What was Mr. Nathan's position at the time?

A He was some -- I don't know, assistant something to Phil Heymann or deputy something or associate something. I can't even keep my own titles straight over the years, let alone everybody else's.

Q Could you tell me what you recall about the substance of this meeting?

A The Nathan meeting?

Q Yes, other than what you've already testified to this morning.

A I don't really recall any --

Q I apologize, asking you to repeat here what you've testified to at the House.

A Heck, if you're going to set me up for a

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perjury charge, you better do it some way -- oh, that's not --

Q It hadn't crossed my mind until you mentioned it. No, just kidding.

A Actually, one of the things that runs through my mind on this, and in terms of showing you being issue-oriented, we have the 1001 recent Supreme Court decision which takes you guys out of it, the legislative branch and executive branch with respect to 1001, so even to make a joke like that, we are the ones who get, like, the allegations about perjury during the Waco matter and all of those.

So we see these things all the time. That's why it's so exhausting to me to go through this and also frustrating because I've generally reviewed this transcript from the House, and I know that you obviously will have a hard time to fit it in with the notes even though I went down and talked about Greek letters of the alphabet and slashes and back slashes and everything else.

No matter how many times we go over that in that way, no matter how many transcripts we make,

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you're going to still have the problem of having a document and a transcript and having to try to meld them in terms of understanding. And as long as you focus on that, it's always going to be a frustrating experience.

And I feel frustrated because I've been hundreds of thousands of transcript pages in my career. And I did an investigation a number of years ago that involved alleged alteration of House transcripts where people fixed up things and changed the tone of it. I see you creating an incredible amount of paper and I don't know where you're going and you have your own investigation.

But I have to say the information I'm giving you, it's available from multiple sources. It's not particularly material, and I at least don't detect the significance of it. I can see you being interested in the specific procedures or the specific conversations about the recusal of Paula Casey and how that came about.

But some of this stuff, as I look at it, if something was in my office, would I task somebody

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with sitting down with a time line and finding everybody's version of this meeting, to crisscross them, et cetera, at least from the criminal prosecutive standard of trying to find out what happened, they'd ultimately be worthless because there's no other extraneous corroborative material. There's no tape-recording of what occurred. So even putting aside materiality, it's frustrating to me to see this number of resources used this way. There's my two cents.

Q Well, I apologize for making you be here.

A It's not just me. It's tens of people and it's two, four, six staff people have to be here to go through this stuff. And I'm not doing my job -- I mean, my job being the job I have to do back at my office.

(Recess.)

BY MR. FISHER:

Q Mr. Gangloff, is it your understanding that the information that the department was receiving at or around this time, September 20th, when you were in this meeting with Mr. Nathan and Mr. Keeney and

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Mr. McDowell, that the information the department was receiving about the proffer that Mr. Hale was willing or was not willing to make, that information was coming from the Eastern District of Arkansas?

A I just don't recall, but I hesitate to call it a proffer and even suggest that he was willing to make it. The standard point seemed to be that he wasn't willing. The point seemed to be what he wanted was for the department to buy a pig in the poke. He wanted everything up front from his standpoint, and that's not the way we do things.

Q But what I'm trying to get at is whether that characterization that you just gave was coming from information you were getting from the Eastern District of Arkansas or whether --

A I think that was coming from the Eastern District of Arkansas, not from --

Q Not from Mr. Nathan or his reporter source?

A No. But I don't know whether it came as a follow-up to the Irv Nathan conversation -- I know in the past my recollection has been that I knew something more about it before the Irv Nathan thing.

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I think I said this today, I think what the Irv Nathan meeting added was that Hale's attorney was going public with the information. I think in the short time period before that, we were already aware of this thing going on prior to Hale's attorney saying he had something but not willing to put forth with what he had.

Q But no one from the main Justice was in contact with Mr. Hale's attorney, to your understanding?

A Not as far as I know.

Q So any information about what he was willing to say or what he wasn't willing to say had to be coming from the Eastern District of Arkansas?

A That would seem to be a fair conclusion and it would be consistent with the emphasis at or about this time of communicating to the attorney that he could have access to main Justice.

Q Do you know whether anyone at the department reviewed the letter that was intended to communicate to Mr. Coleman that main Justice was an available option for him?

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A Oh, I think so.
Q Do you know who that might have been?
A No. I may have seen it myself, but I don't think it was write a letter and make this clear and send it and that's that. I think we said -- I think we probably asked to see that letter, but it may have been sent after the fact. I'd be very surprised if there was no follow-up on it.
Q Was it communicated that this letter should be sent prior to the indictment?
A Well, I'd like to say yes on that because it seems overly obvious that would have to be it, but the context of the way things were moving along was send a letter now and since now didn't include having been indicted. Now meant now was not now.
It wouldn't have served its purpose, by the way, as I told you, with respect to the possibility of cooperation, whether it's consensual stuff, which is one that I emphasized and that opportunity being greatly diminished when one is indicted, or if it's just obtaining documents that someone would now be alerted to or destroy or alter, it would not be in

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the department's interest to have a proffer occurring after the indictment if we could get one before the indictment.
And there was also some discussion at some period of time in and around here about the possibility of having a sealed indictment or in camera plea, which again would have preserved certain investigative options.
Q When is it usually considered to have a sealed indictment?
A Well, when the defendant is not in custody and you fear that the defendant will flee. That's one. When you want the defendant to cooperate by making consensual telephone calls or having consensual monitored meetings is another. When there are codefendants who are still at large.
Sometimes it's done to seal something on the verge of a statute of limitations expiration, although returning the indictment precludes you from additionally developing that case in the grand jury, there are still other investigative steps that you can better take if the person doesn't know that

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they're indicted. There are a few. I'm sure there are some other reasons for it.

Q I'm sorry. I don't want to misunderstand, but were you referring to the fact if it's a sealed indictment, the defendant does not know that the indictment is outstanding?

A There are some circumstances -- in this circumstance, the intention would be that the defendant did know.

Q So it's a choice?

A It's a choice of the prosecutors, right.

Q Whose discretion is it to seal an indictment?

A Ordinarily, the discretion of the United States Attorney. It may be delegated to the person handling the case.

Q Does it require a court's approval?

A Well, a court would have to actually seal it because an indictment is not a returned indictment until after it's returned in court, and since most indictments are returned in open court, you'd first have to coordinate the return of the indictment with

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the court, and I assume you'd want that part of the procedure closed as well. So you would go forward with that.

Q Are there any other reasons why a court would not agree to seal an indictment?

A Yes. One of them would be -- under the Constitution, you're entitled to a public trial. It's unlikely that a court would seal an indictment for no reason. You probably would have to proffer a reason to the court as to what the purpose of the sealing of the indictment was. And it also might be subject to a seal for a given amount of time.

I think it would be highly unusual to have a sealed indictment for which someone pled guilty and may have even received a sentence and all of that remained sealed. That could happen in a case where undercover type considerations were involved or cooperating witnesses were involved.

But you know, it's like anything else. You're balancing various interests. So to have an indictment sealed for a short time requires less of a showing or less of a predicate than to have it done

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for a long period of time. And here, what would be contemplated specifically, the indictment would be sealed in order to allow for the placing of consensual calls, et cetera.

But of course, based on the information we had, we didn't have a lot of people -- I don't think anybody said well, let's have Hale call the President. I don't think he represented that he had that kind of access. So that wasn't even an issue. I don't know how long the list of possible people he could contact would even be. That's the kind of thing that comes from the defense attorney ordinarily when they're telling you why it is you should accommodate the client.

Q And that's based on the information that you're receiving from the U.S. Attorney's office in Little Rock?

A That's what that would have been based on, but I don't know what "that" is at this point.

Q Are you aware of any circumstances where a U.S. Attorney wanted to seal an indictment based on a proffer of something like consensual cause or

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cooperation and the court refused?

A No.

Q Mr. Gangloff, I want to show you what I believe are your notes, and it's a document with the Bates number 7736 to 7748.

Do you recognize this document to be your handwritten notes?

A Well, it appears to be portions of a notebook kept by myself. There are some things on it that I'm not familiar with, what appears to be letters C and 1 on all the pages. I'm not familiar with it. The word "redacted" is used in certain areas, and that was not placed there by me. No redactions were made by me.

Aside from that, they appear to be my notes and there are some situations in which it appears that the writing is not legible on the photocopy or that possibly part of something on the edge of a page was being cut off by the photocopy.

Q I can represent to you that the C1 markings on the document were placed there by the Special Committee.

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MR. KRAVITZ: Can we go off the record for a second.

(Discussion off the record.)

BY MR. FISHER:

Q Turning to the first page that's numbered 7737 on the bottom, could you describe what you believe these notes to be?

A I believe that these are the identical notes with the exception of the C1 designation that I testified concerning when I was deposed by the House, and I believe the numbers on the bottom correspond exactly to those numbers which appear on the documents that I previously testified about, and I believe that in all respects, other than the C1 and possibly the addition of redaction language, this page and these notes are identical to the notes which I extensively discussed in my deposition of a short time ago.

Q Thank you. If I can direct your attention to the bottom right-hand corner of the page of the line that starts "USA" I believe, "Paula Casey." Could you read the two?

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A It says "USA equals Paula Casey (acting/to be conf'd)." And as I said in my House deposition when asked to read that line, I believe that indicates that the United States Attorney was Paula Casey, that she was acting and about to be confirmed.

Q Could you read the two lines?

A Yes, again, as I told the House in reading these two lines, I stated that "no" with the Greek letter pi with the word "experience" indicating that Paula Casey had no prosecutorial experience and the line under that says -- "close to Clinton."

Would you like me to go on?

Q No, that would be fine.

Could you explain to me what was discussed at the meeting, to the best of your recollection, about Paula Casey being close to Clinton as your notes describe?

A Well, the fact is that the allegations against Hale related to a banking matter and that Hale had run an SBIC and that Paula Casey recently assumed or was about to assume supervision as the United States Attorney of the United States

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Attorney's office conducting the investigation.
Our information was that Hale was purporting to have some information about the President and the two points that were being noted here were that she did not have -- maybe none, but maybe no significant prosecutorial experience, and she was close to Clinton which is hardly surprising since she's in his home state and recently received a political appointment. And they were two of the factors we were considering.
Q Do you recall anything else about what was discussed about the relationship between Ms. Casey and President Clinton?
A I don't think there was anything else.
Q Do you know whether this statement was coming from someone in the room, or was it someone in the room was reporting this or how it came about that this statement was made?
A Well, I didn't know this information independently. So somebody was saying it, whether it was somebody in the room or somebody on a speakerphone. In looking at these notes, I know

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we've talked about the meeting on 9/20/95, but when I look at these notes, I'm not seeing why I'm assuming that was the meeting as opposed to a phone call, but it looks like it was a briefing of some sort with respect to this factual --
MR. KRAVITZ: Did you mean 9/20/93?
THE WITNESS: 9/20/93, right. Thanks. I'm sorry. What are you trying to find out about this?
BY MR. FISHER:
Q I was trying to learn how this information was coming to you at that point, whether it was somebody telling you at the department or the department already knew this or Mr. Hale was alleging this, or how it was coming to the table.
A I seem to recall that I had a recollection of these things, both when I talked to the Independent Counsel and when I talked to the House of Representatives. I don't know whether I had that information because they were giving me different information or whether the context of the questions is different.
As I look at this right now today, I'm not

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remembering why I thought it was a meeting or why I didn't think that it was a meeting. It's clearly background material with respect to who Hale was and what the charges against him were.

Q Turning to the next page on 7738, could you just read the first line of your notes there?

A It says "alleg, relate to Clinton/" and it looks like it says "Tucker."

Q Going down to the middle of the page, the part that's kind of indented and starts "suggest probably Casey recusal."

A That appears to be an arrow followed by "suggest Casey recusal from Hale alleg," which would be allegation, and then it says "(possibly from Hale)." I do have a recollection of having discussed this in some detail during my House deposition because at that time I believe I went into an explanation, which we've already done today earlier, with respect to the difference between recusing the United States Attorney alone and recusing the United States Attorney's staff, and part of that was also the consideration that it would have been possible to

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consider an option of having Casey recused from the information that Hale was developing as opposed to also recusing her from the Hale prosecution itself. So they were distinct matters.

Q Do you recall who suggested the Casey recusal?

A I don't think it was somebody there. I think what this means -- I think this could be my overhearing Jack Keeney on a speakerphone, and it may be saying that he is suggesting this, or it may be going down a list of saying when one of us gets back or what we're going to do is get the USSO report from the prosecutor, which appears above it this language I read, and get the Casey recusal. It looks like a checklist of what to do.

In terms of the "suggest Casey recusal," I don't think there was a difference of opinion among the department, people here in Washington that Casey should recuse, at least from the Hale allegations -- the allegations that Hale was making. It's not like this was a meeting that involved Jack Keeney or me or Jerry McDowell saying hey, I think Casey should

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recuse.
It was an obvious -- based on the information we had, although it was very slight information. It was obvious to us. This is really talking about relaying some suggestion to somebody else.
Q So the information here and what you've testified to earlier about her relationship -- strike that.
It was clear to you and as you testified, Mr. McDowell, you believe and Mr. Keeney and Mr. Nathan that it was clear that Ms. Casey should recuse. Could you tell me anything more you remember about the discussions?
A Yes, that they wouldn't have had to be very extensive on the issue of recusal because it's pretty clear if you have a brand-new United States Attorney who at least in the public's perception is beholden to the President, she has little or no prosecutorial experience, these immediately thrust us into a difficult prosecutorial issue, and on the eve of indictment someone said they have information about

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the President of the United States and they want certain concessions for giving that information and that decisions have to be made as to whether to acquiesce in it and possibly -- or to go forward and either way, there are serious consequences.
If you call it wrong and you acquiesce and you accommodate the defendant and what he has is nothing of usefulness, then you've messed up a prosecution, a major prosecution on somebody who does have ties to the President, so it looks like you cut him a break for some reason. If you don't cut them a break and you don't get the information and he gets indicted and purports to have offered the information to you, you're in trouble because you didn't pursue the investigation in a way to develop information against the President when you could have.
No matter how it comes out, it's subject to criticism. And when you add the fact that the outcome itself will be subject to criticism no matter which way it comes out to the fact that the possible decisionmaker could be a -- what appears to me to be a friend but someone without prosecutorial experience

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with known political ties to the President who is recently placed in office, so in addition to having no prosecutorial experience, at least running that office as the United States Attorney, and now you say we need a decision on this right away, you don't have a lot of discussion as to whether she should recuse or not. That part seems pretty obvious.

I think where the discussion would be is how to broach -- how to broach the issue. Did we have any -- did anybody have any feel for whether she would be receptive to that kind of input or not? And somewhere in these notes, there's a note to Rod Rosenstein, who's on my staff and had recently done a case out in Arkansas, and the suggestion was made that we contact him just to see -- and he happens to now be on detail to the Independent Counsel's staff, but the suggestion it was well, let's talk to him and see, does he have any feel for sort of what's going on.

And I don't mind disclosing in this context, too, that sometimes there's a tension between Washington and the field. And it depends a

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lot on the individual personalities involved in the field, how often they've handled certain kinds of complex cases or politically sensitive cases, and some of them reach out very early on to get Department of Justice input. Some of them are very reluctant to get Department of Justice input. Some of them feel that Justice wants to come in too aggressively and take over responsibility. Some think that Justice is too reluctant.

So when you get into that kind of a situation, this was one where we were dealing with a lot of unknown quantities. It did seem odd to me, at least at the time, as I recall, that we didn't have an earlier heads-up from the assistant handling the case. Whether that was caused by the fact that he didn't recognize the sensitivity to the issue or had some of what I think would be unfounded fears that Washington would unduly intervene, I don't know the answer to that. The answer is I didn't know the various players who were involved.

Q You certainly believe it would be appropriate that main Justice would be informed prior

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to this point?
A Well, I would, but I've been trained in Washington. If you're somebody in the field that's handled everything that's come your way for 20 years and this is something else coming your way, you look at it a different way. You look at it in a way, too -- some people say recusals as not standing up to the plate. Some people see a recusal as not being willing to make the hard decisions.
In Washington, we don't see it that way. We see it much more practically, I think, so my judgments would be not just different from the assistants on this, but on a large range of issues, my judgments would be different from somebody in the field. We have different jobs.
Q When you testified that you were surprised that it had become so advanced without the criminal division input, were there others within the criminal division or within this meeting or within your section that were surprised as well?
A Well, when something like this happens, and you talk to people who have been -- prosecutors in

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Washington, particularly in the public integrity section and people in our section have a specific tenure, you're talking about people with a decade of experience.
When an assistant gets information implicating possibly the President of the United States and doesn't call Washington -- you roll your eyes. I mean, none of us would do that. You wouldn't stay in our office for a year -- I hope you wouldn't stay there for a month. In fact, I hope you wouldn't come to work in the first place until you had some appreciation that there's an appearance aspect to everything the department does.
And when you get into the political figures, there's oomph factors and one of the things that complicated this is the fact that the Independent Counsel's statute was in abeyance. If the statute was there, the analysis would have been more forced because they're actually required to make referrals with respect to certain matters on covered people. And the President would have been a covered person.

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Q Do you recall how it was decided to communicate this opinion that Ms. Casey should recuse herself at this point?

A I don't think it was decided to communicate the decision or an opinion that she should recuse. I think the way that many managers work, and I find it to be rather useful, is you ask questions, and you allow people to propose solutions. And hopefully, your questions are effective in the way of producing proposed solutions that happen to be the solutions that you think are the proper solutions.

So I think that everyone was wary and knowledgeable and experienced enough that no one was about to pick up the telephone to a newly appointed United States Attorney and say you should recuse or you are recused. I think it was more of an educational effort, that we had become aware of this certain issue and we're available as a resource under certain circumstances in these kinds of circumstances, those kinds of things.

So there's more discussion probably than some would appreciate on the ideas of -- and some of

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it becomes second nature after you've been there for a while, but on the nature of how you present information and how you get the results.

We have, I think of it as kind of a light touch in the way we do things. We don't like to tell people what to do, but we like to get our way, so --

Q Do you recall whether communication or contact with Ms. Casey was made after the September 20th meeting?

A It may have been at that meeting that Keeney -- I know he reached out for her on or about that time, and I think he had gotten in touch with her, and I'm not sure whether he got in touch with her either by speakerphone or not. I know he tried to, and it would have been at that point, one, where she was -- she was new, being trained, and probably was not 100 percent on top of this thing.

And the other thing to keep in mind is the assistant had been running this case for some time without her supervision -- and I don't know the facts of this, but it would not surprise me to learn that he wasn't exactly keeping her completely fully

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briefed and looking to her for decisions on this stuff, that he basically saw it as his case and he was running it.

Q Do you recall when Mr. Keeney reached out to Ms. Casey, what he said other than asking these directed questions as you've testified before? Do you remember anything Mr. Keeney told you about the substance of that conversation, whether it be what he said or what --

A He didn't tell me about the conversation. That's not my recollection. My recollection is that if that conversation occurred, that I was actually there -- the way to maybe tell you what happened is to say that I knew there was an issue with respect to her willingness to recuse and our being able to assess whether she would be willing to recuse. And I know that that all came to a head at a later meeting when she actually was in town on the very issue of recusal.

But as far as the dance that occurred before then, all I know -- again, being issue-oriented -- was that I knew at some period of

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time, about this time that she was not going to be inclined to say I'm out of here, thanks a lot. It was one where she really did see it as being viewed as a comment on her inability or her reputation or on the President's culpability or something like that, that her view was at odds with the Washington office for the appropriate standard for recusal. That was clear at a relatively early time, and it was also clear that it would take an educational process to kind of pull things around.

Q Were there any other reasons you were aware of that she was unwilling to recuse at this point, other than the ones you've just expressed?

A No. Whether I knew it at this time or later, I think the bottom line -- and I was essential aware of this by the time we had the meeting where she came to Washington -- bottom line was she has a fine reputation. She perceives herself to be and is, so far as I know, a hard worker and intelligent person intent on doing the right thing and she simply did not want to be perceived as stepping away from difficult decisions or having it suggested that she

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couldn't make difficult decisions.

And the other part of it was her perception if you pull off of a matter, it means that you think the person you're naming as your reason for pulling off did something wrong, and as I explained here earlier, that's just not the standard.

Q Did anyone express to her the appearance standards that we talked about earlier relating to recusal?

A Well, the way it would occur would be -- for example, at this meeting that finally occurred, you would say okay, suppose you stay on the case and X happens. Then what? Suppose you stay on the case and Y happened. Then what? When would you see -- what would be the decision time you would be looking at? What would be the event?

And by going through those things, you get to the point I discussed earlier, as you go forth down, you see there's no better time than the present to make that decision, that there's a very small threshold that you actually have to satisfy before the recusal is appropriate, and everything else makes

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the issue worse.

In fact, in this case -- and I frankly don't know, because I have other things to do than read all the stuff that comes out of these hearings and stuff like that, I don't know whether the view is whether she believes she recused too early or she shouldn't have recused or she thought Justice made it look like she should recuse. I don't know what the theory was.

At one time Chip asked me the theory what the House is working on. I said no, I don't want to know their theory. I have very little interest in it and I didn't want to pollute my opinion one way or the other.

But from the facts I know, I can't figure out what the gripe is in the sense that I can't see any actions that could have been taken that wouldn't be subject to at least as much criticism as what happened has been subject to, and yet, having been part of at least the decisionmaking that caused the events to occur as they did, I think the way it happened was the right decision, that she was out at

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the appropriate time, and that there was no issue that she should have been out, and that it wasn't intended to reflect on her in any way.

And that was one of the things we discussed at some point in how we would present the matter to her, that it shouldn't reflect a lack of respect for her abilities or lack of respect for her integrity. But that wasn't just a bunch of bunk. That's the truth. Our standard doesn't go to that.

Q I guess what I don't understand or what maybe you could help me understand, at this meeting on September 20th where you all were discussing this and your notes reflect this, you testified that it was clear to you and Mr. Keeney and Mr. McDowell and Mr. Nathan that there was no question she should recuse.

A I don't know whether Nathan was in on that -- he may have been imparting information, but certainly I think by that time -- and not because of what Irv was saying, maybe we had already made the decision that she should be out of it -- but that was sort of showing the pot boiling, but I don't think

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there was any question that she could not successfully stay in the case.

Q And that was an opinion shared by you, Mr. Keeney and Mr. McDowell at least?

A So far as I recall, yes.

Q With the experience that the three of you have. And at some point, this was communicated in some way, whether it be directed questions as you described, or some other way, to Ms. Casey, who was a newly appointed U.S. Attorney. And I'm unclear as to why she was unwilling to recuse after that September 20th meeting, given that dichotomy?

A She doesn't know Jack Keeney. She doesn't know how Washington works. She knows that she's been given a substantial responsibility with respect to federal law enforcement in her own district, and she has a reputation in that district. Now, somebody --

Q I understand.

A You asked me why. I'm telling you. I mean, so -- somebody calls her out of the blue and in a case she has no, so far as I know, real attention focused on, said Washington is interested in how your

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office is handling this thing. Well, I mean, that's a blow politically, egowise, et cetera.

The information at that time -- remember, we were still gathering information, so it wasn't like you should get out, you should get off. It was much more designed to assess what are her feelings on this at this point. You do things in a more gentle way. We work with U.S. Attorneys all the time.

First of all, there was no personal gripe with respect to her abilities or her integrity, and secondly, there was no reason to foul a relationship with the United States Attorney at the beginning of her term. And she had trusted -- the person who was handling it was an experienced United States Attorney in her office who one would think she would have great confidence in, firstly. And secondly, certainly would know better than these faceless bureaucrats, and I would bet that the stories that were going in her ears were not from Washington is usually right. Washington is experienced. It probably dealt with meddlers in Washington.

So I wouldn't expect to pick up a phone to

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a new United States Attorney and say you don't quite understand what you're doing in terms of procedures and protocol and appearances and subtleties, but take it from us, who you've never met, step out of what could be the biggest case that comes up during your entire tenure on the most recognizable and well-known person in the United States.

Q Certainly. Mr. Keeney, though, wasn't in actuality a faceless person to her. She would have known who he was within the Department of Justice. All she would have to do is pick up a directory and find his title; isn't that correct?

A Well, I mean, you could find that out, who called you from the Department of Justice, but you don't know if it's somebody who knows what they're talking about or not and when you look at the titles, you don't know whether it's somebody who actually has clout or not. You don't know how far up the chain you should go before you get an answer.

And a good answer to that is ultimately she wasn't satisfied with having heard something from Mr. Keeney. Ultimately she met with the Deputy

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Attorney General and it was a big enough issue that not only he entertained a meeting personally but he had his assistant there, and he had several section chiefs there and I think that JoAnne Harris was there, but I'm not sure. I remember Jack Keeney having been there.

She was represented by the guy from the USA, Tony Moscato, and there's a little friction there because they basically are liaisons to the U.S. Attorneys and they don't want to see the turf of the U.S. Attorneys necessarily invaded. So it was perceived as a big issue to be handled in an appropriate way with due respect to the United States Attorney. So that's why it got handled the way it did.

Q Do you recall, in that meeting in Mr. Heymann's office, was that the meeting of November 3rd?

A It could have been. It was in his conference room, and it would have been the only meeting that had that Moscato and Heymann --

Q And Ms. Casey?

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A -- and Casey. It's the only meeting -- I may have met Casey once when she was walking through, but it's the only meeting I recall having been at with her.

Q Do you know whether there were ongoing discussions between the September 20th meeting and the November 3rd meeting between Ms. Casey and the department on the issue?

A I'm sure there were some, but I think it was determined relatively early on where she would come to Washington or was coming -- I seem to have a recollection for some reason she was in Washington on another matter and this meeting was added on. But I think early on, it became clear that it was going to be a face-to-face kind of an issue, and that for that reason, it wasn't like she was being cajoled and discussed and everything and let's all get to the deputy's office.

I think at a much earlier time it was clear that this was something the deputy would sit in on and it would be resolved there. It's not really like a gap from, whatever we're saying, the 20th to the

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23rd. It's more like the fact that there would be this meeting and the fact that her schedule coincided with it. That stuff was all settled much before the 3rd.

Q At the meeting on November 3rd, did you have an impression whether Ms. Casey had decided to recuse herself when she came to that meeting or not -- had reached a decision on that issue?

A I don't know. She may have been open to a decision. I think she was reluctant to recuse, and she wanted to -- I think she wanted to understand that it was the appropriate action to take.

Tony Moscato was there, as I said in previous testimony, to basically echo her views. I think that there was a genuine difference of perception in terms of what the appropriate threshold for recusal was.

Q But you didn't get the impression that she had come to this November meeting and said I'm going to recuse?

A No. I mean, she -- as I recall, her attitude was wait a minute. If I recuse, it means

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that I'm saying that the President did something wrong because that's why I'm recusing, or it means that I'm not going to step up and make these decisions.

Q And that was the -- was that the same reasons that she put forth in September --

A If she went into the reasons. We're talking about a different perception of a process.

Q I understand.

A But she's not unique in that. This is common. The situation is quite common with respect to United States Attorneys throughout the country, where we have some -- and sometimes they're accommodated in slightly different ways.

There was a recent prosecution of the Attorney General in Pennsylvania, and in that particular one, it became clear that the United States Attorney, it was appropriate for him to stay directly involved, but for appearance and practical reasons, it was a very close coordination with the involved sections here in Washington.

So you know, there are ranges, et cetera,

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but the first response is hey, the President appointed me. I don't mean from her; I mean generally. The President appointed me to be United States Attorney in this district. That's a great responsibility, a great honor, et cetera, but I'm going to make those decisions. Somebody has got to make the decisions.

As I'm sure you know from dealing with people in Congress, people who are actually decisionmakers begin -- or do recognize their value as decisionmakers and are willing to make decisions. They know that's why they're useful, so they become very reluctant to step away from that for any improper reason or any reason of feeling like they don't have the gumption to stick with their opinions or convictions.

And she came in, I think, and her demeanor was just one of hard working, dedicated, I don't know what you'd normally do with these cases. I think maybe she had some concern. Was she being asked to step out in a situation where somebody else wouldn't have been? And there may have been some examples

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discussed as to when people have been asked to step out. But it was an educational process more than anything, as I recall.

Q But what I was trying to get at is whether, when she came to the meeting on November 3rd, she was putting forth the same reasons that she had -- that you had been aware of back in September, or was there new information that was being brought to the table at that time?

A I don't remember her putting out the reasons back in September, but in my recollection, there's no reason for her reasons to evolve, because again, under our analysis of doing things, any new reasons would be meaning we're moving along and the more we're moving along, the more we're just kind of cementing the idea, the time is passing, she should be out. But she couldn't come back and say actually, there's less about the President than you thought, and that's why the appearance won't be different because then we're back to the fact that there may be less or more as a matter of reality.

But from the standpoint of public

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perception, they don't have your grand jury transcripts. They don't know about the deals that are going. So if you say there's more, people will say you're undercutting or people will say you're shifting it this way or that way.

Q It didn't really matter what the general substance of the allegations were, whether it was more information that had come to light?

A I would be shocked -- I would have to say, I would be shocked if you could find in hearings or elsewise, an experienced federal prosecutor, I mean experienced not in terms of number of cases, but in politically sensitive cases, and you could -- I would be shocked if you could find one that said they shouldn't have recused. I would be just as shocked if you would find a majority of U.S. Attorneys I would recuse as soon as Justice suggested it to me.

MR. KRAVITZ: We have to depose Chertoff.

BY MR. FISHER:

Q If you could just turn to page 7740, and I would say the second two-thirds of the page, and I realize that you've testified about this in the

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House, and I would like to understand it better because I'm not sure I have a grasp of it from your testimony. You had explained to me what exactly the allegations were regarding this issue.

A This is the one where it says Coleman may allege July seizure by FBI of originals?

Q Yes, and I don't know if it's something that relates to something above that or not.

A This says "Coleman may allege July seizure by FBI of originals. Coleman claims one document has Clinton's name" with two stars, and it says "when Coleman" -- either "reviewed" or "received," I think it's "reviewed" -- "documents it was not there," and I'm filling in on abbreviations in reading the whole words here and two stars.

And then it says something "necessarily would show" -- I don't know what the next word is -- oh, "criminal activity but would incriminate Clinton." I think what was on the document might show not necessarily criminal activity but would somehow incriminate Clinton, and I think the concern here -- and this is a little bit of a real effort to

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try to make a recollection, so it's not maybe all that great, but here it is.

We've talked about the fact that each step of an investigation can be challenged one way or the other and you sort of are in a no-win situation if you do something or if you don't. As soon as you've created an appearance that there's a political intrigue here, and I think one of the things that happened here was that documents had been seized in the Hale investigation pursuant to -- it looks like it was a search, but I don't know. It could have been -- seizure, I guess it's a search.

Q You didn't have any participation in that?

A No, no participation in it, but the fact is if Coleman, the defense attorney, comes and says listen, my originals have documents in there that implicate Clinton, all you have to do is look at them. But I don't have them because the FBI has them.

You then say show me which one and the FBI looks through and says it's not here, somebody took it out. I don't know who did it, but there was

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something in here that really implicated Clinton and now it's gone, and the FBI must have taken it out or the U.S. Attorneys must have taken it out.

Now, when that happens, you want to say don't worry, you can trust the local United States Attorney who was just appointed and has political ties to President Clinton, and that didn't happen, or you want to be in a position to be having it run out of headquarters kind of thing. That's one of those kinds of things that come up.

In other words, we're sort of going down the hole, all of the problems that are here that are basically unwinnable kinds of issues, and we talked about a lot of them, but that's one that arises here.

Q And was that a possible or potential --

A It looks like it says "may." It looks like it appeared before Coleman said anything and in finding out what documentary evidence there was, it looks like there was a discussion of the documentary evidence in the case and it had to do with the $300,000 check and the $250,000 deposits. And it must have come up that this seizure of documents had

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taken place and that, of course, introduced this other issue, what if you go in and there aren't any documents, and he says well, there were but now you guys have done something to them.

Q Do you have any reason to believe he was going to claim that scenario?

A I don't think he ever claimed that scenario. Frankly, the way everything has ultimately came out -- and I'm not privy to the Independent Counsel's investigation, but I suspect that our instincts were correct and the reason he did not make a full proffer initially was because he did not have evidence implicating the President.

Q But you don't have any reason to know that one way or the other at this point?

A I read the newspaper, same as you and I know what happened in the beginning. I'm saying that was our initial inclination, he should put something up and I know he let himself get charged and if he had the information, why? Why would he do that? Is he going to write a book when it's all over from prison? Common sense says by now, if this

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information were true, we should know about it.

Q You're saying he let himself get charged and you're referring to the September 23rd indictment?

A If that's the date of it, yes.

Q And that was -- strike that.

Could you turn to page 7745, and I believe you have testified in your House testimony that this may have reflected a call by Jack Keeney to Paula Casey right after this or during this September 20th meeting?

A Yes, I've talked about be this today, as a matter of fact. It looks to me like it's saying 12:00 "J. calls Paula Casey" and "out this week." And it says "Fletcher not in" so I would think that he asked for Fletcher and Fletcher wasn't in, because it says at 12:14 Jack asked for first AUSA Michael Johnson. And judging from the notes that followed, it looks to me like he got through to Michael Johnson and Michael Johnson gave this briefing.

Q Down a little bit under that where it says "Casey was going to talk with Moscato," what's the

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next line there? "Issue re:" --
A It looks like it says "issue re: President/current government." This may have been that Johnson may have been saying that Casey was aware of the issue and going to talk to Moscato from the Executive Office for the United States Attorneys about it.
But then I see Johnson's -- it also says "Johnson equals last fall matter equals Pres matter." That may refer to Johnson was involved in some way in the previous correspondence that had related in some way to this that had come in the previous fall.
Q That would have been referring to the RTC criminal referral relating to the Madison Guaranty allegations?
A That's what I -- you know, that's my general recollection, that that came in, and that it was the -- but I don't recall it being -- I don't know whether it was citizens correspondence or an RTC matter. I don't know whether it was styled as a criminal referral at the time, quite frankly. I

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don't remember whether I knew about it at the time. I seem to think it was handled by the fraud section, but we may have had some -- I wouldn't be surprised if we had some initial involvement in it.
Q Would this be that Johnson was referring your attention or Mr. Keeney's attention to that matter, that referral relating to Madison during this conversation?
A I can't tell. I can't tell.
Q And would that have played into the whole discussion?
A I don't think it was really particularly material to the discussion. I mean, I think it would have been a side note in terms of either Johnson was familiar with it because he was involved with this thing or -- you know, I just have no --
Q Turning to 7747, and I don't know if this is notes -- because I can't tell what's been redacted, if there's another date or whatever. I don't know if it's a continuation of your notes or not from this day. If you know, please tell me.
A It says "redacted" three times and again, I

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don't know who does the redactions. And if it's Justice who did it, then maybe it means that it's not related to this matter. And if it's the Independent Counsel, maybe it means it is related to this matter. It's tough to get it from context.

It looks like it says "any thoughts to recusal" and "no" and a paren on it does relate to these conversations, "(comments out of senate committee)", and my almost guess of it would be that Johnson was asked and what's been redacted may be a whole series of things what the answers were that he was asked whether he had or Casey had given any thought to recusal and the answer had been no.

And the next line says "Paula Casey had federal practice seminar in San Antonio, Texas" and her phone number there, so we found where Paula Casey was.

Q It was Mr. Johnson that was telling you Ms. Casey had not given any thought as to recusal?

A In this early time I don't have -- I mean, if all you have is Hale basically seeking a deal and making incredibly vague statements through his

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attorney and specifically refusing to proffer more and not coming to Washington and shopping it to the press, it may not have been apparent at that time that Casey had to be out.

As I said earlier, it wasn't apparent even when she should get out of the allegation part, that she had to get out of the Hale prosecution. So there's still the possibility at this early time that --

Q She could stay in the Hale case?

A -- that it wasn't anything much more than somebody staying in prison and saying oh, I knew about it. There has to be something there to make you treat a case differently than how you otherwise would. Throughout this period, you can see we're gathering facts along the way. So one reading would be if she said yes, she had given thoughts to recusal or he had said that, then we would be exploring the basis for that because that would quickly identify relevant facts. If the answer is no, either they don't have or we might not yet have the relevant facts.

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Q Were you during this conversation, because you had been discussing recusal earlier that day, and that is if this is a continuation of the same day, which I don't know --

A I can't tell whether the pages were consecutive actually until my notebook.

Q And I understand that. But were you trying to get more information on this issue, on the recusal issue during these conversations with Mr. Johnson?

A That's hard because -- everything is the same issue. Everything is a recusal issue and it all goes back to -- everything in the issue is gathering facts and finding out what we're talking about and obviously one of the things we're talking about is the recusal issue.

So whether the issue is getting more facts or having Hale come directly to Washington for any concerns he may have, it's all kind of one issue. I don't know how to answer that question.

Q But as of this time, it was clear, regardless of what more facts you got, that she should recuse, as you testified earlier to?

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A I hope when you look back and see that I earlier did, it was so sufficiently qualified, that even now I can say to you as I'm looking at the notes, which I didn't have before me then, it may be that we hadn't reached to that threshold yet, that this was -- I can't tell how preliminary this was, is what I'm telling you, and if all we have is we just got word that this guy says his client has information implicating the President and he wants a misdemeanor or he wants the case dismissed and he wants a deal, that's all you know. All you know so far is the answer to that is no, you can't have that. That's what you know first, so that decision was there.

The timing aspect was there. How to handle the underlying Hale case was there and I know the decision for Washington to handle the Hale case itself, that evolved much more slowly than how to pursue the allegations. It wasn't so apparent. There was always the attempt -- you don't want to invade the U.S. Attorneys responsibilities more than you have to.

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Q Certainly, certainly. But the allegations were separate?

A Right. We didn't know quite how much they would overlap, but they were separate.

One thing you should -- again, I don't know what direction you're going in here, but the easiest thing to have been done, depending on what outcome you want, but if somebody had said uh-oh, Hale has information on the President, let's give him what he wants, that would take away the trial possibility.

So you could say that giving him what he wanted instantly would be consistent with not wanting to embarrass the President because once you put this on a track which is what the U.S. Attorney's office was saying all along, we're not dealing with this guy, you're basically guaranteeing that he's going to trial, when he has free rein to say anything he wants about anybody he wants.

And again, I don't know your operating principle, but it seems to me the course that the U.S. Attorney and the U.S. assistants were on prior to Washington's involvement would have inevitably

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resulted in having Hale's having a public forum and forcing him if at all to take these allegations publicly. They were taking away the ability to have it done behind closed doors. Go pound Sam, we're not making any deals with you.

Q Did you know anything about Ms. Casey's relationship, if any, with Governor Tucker or his wife at this time?

A No.

Q Did you come to learn about that at some time?

A I don't think I know about it today.

Q Was that discussed at the meeting with Ms. Casey on November 3rd?

A Not that I recall. I mean, I think I had a general awareness, whether I learned it in this specific context -- Arkansas is not a very large place, and people there, you would expect, know each other politically once you're at the level of the governor, the President and the presidential appointee to be United States Attorney. So to me, I don't see much reason for my remembering what the

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specifics of the relationship would be.
To me, the fact that it's the President's home state, she's recently appointed, those kind of things, and there was knowledge of Tucker's relationships at least generally with the President. So I mean, you knew it was a small community of people that you were dealing with. I don't think that the details were anything.
Q Do you recall at the November 3rd meeting Ms. Casey discussing relationships with anyone else that might pose a problem or might weigh into this issue of recusal?
A No, I think we had enough of a problem at all. And the solution to that problem would solve all the others.
Q At the time of the November 3rd meeting, was it discussed at all, the RTC criminal referral relating to Madison that was discussed in your telephone conversation with Mr. Johnson prior to that?
A I don't know whether it was discussed or not because I don't know whether at this time this

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file had been -- oh, the meeting in Heymann's office. I just don't know.
Q You don't recall one way or the other?
A I don't recall.
Q Do you recall whether it was discussed that there were additional criminal referrals coming out of the RTC that may --
A At some time we were aware of that, because that's why Jane Erickson was brought into the case, to track down those, and I think the number 9 sticks out in my mind, the number 9 matters. A lot of these things may have been -- again, we went in and we kind of knew -- at least I knew where we were going on this thing.
So the other thing that may have come in would have been in the nature of weights. Somebody said listen, you have this issue in the wings and you also have this and when those two things come together, it's going to cause a problem. If you don't recuse now and recuse later these problems will occur. But again, it's not really -- it wasn't necessary for me to notice those things. I don't

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remember them.
Q Do you recall her bringing any new information with her about other possible factors that should weigh in on her decisionmaking process?
A No. I think the bottom line, as I said, was she perceived the recusal decision as having at least the twofold result of suggesting that the subjects of the investigations had done something wrong, namely the President, and she was unable, unwilling or not qualified in some way to make the decisions.
And I really think that was the driving bottom line, that she was willing and able to do her job and she wanted everybody to know that and we had to explain that her job did not reach the feeling that she had to go down this basically -- it wasn't time to go to an unwinnable battle. Because from a public perception standpoint, no decision would survive. I suppose that's been borne out, but the public still cares about it so --
(Pause.)
(Recess.)

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BY MR. FISHER:
Q I want to concentrate now on the November 3, 1993 meeting that you discussed earlier in Deputy Attorney General Heymann's office. Could you tell me who else was there that you recall. And I could tell you what you testified to at the House, if you'd like, just to jog your memory.
A You won't be jogging my memory. I think you'll just be telling me what I said before the House.
Q I'm not trying to give you a memory test is what I'm saying.
A Right. It's tough to figure out what we were doing but Paula Casey was there. Phil Heymann was there. Irv Nathan was there. I was there. Jerry McDowell was there. Jack Keeney was there. I'm not sure whether Al Carver was there or not; I think not. And I'm not sure whether JoAnne Harris was there, although I'm starting to think that maybe she was. Anybody else who I was --
Q Mr. Urgenson?
A I just don't remember. Did I say he was

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there before?
Q I believe so.
A I don't know.
Q Was it correct that Mr. Heymann basically led this meeting?
A He was the highest ranking official at the meeting. It was in his conference room. He was at the head of the table.
Q Did he lead the discussion?
A Well, he asked some questions. Irv Nathan asked some questions. There's a certain style of meetings which basically is -- and you hate being the second-in-command in such situations, but there's a certain style where the second-in-command basically asks most of the questions and other people -- sort of the lowest person on the totem pole floats the stupidest ideas even though the boss knows that he's going to float those ideas because the boss can sit back and see what's going on. And I think that it's rather well-known that you tend to learn from listening, not from talking.
So Heymann was certainly in charge, and he

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certainly had the authority to make decisions and to bend the direction of the meetings if he felt like it, but he did it in a very subtle way. I have the greatest respect for him in terms of his professional abilities, and it's a learning experience to attend a meeting with him.
Q Do you recall anyone's views from that meeting other than Mr. Heymann? Were they expressed in any other way than this questioning?
A It's interesting that you put it that way. I don't think that Mr. Heymann made his views obvious.
Q What about anyone else?
A I think that Paula Casey was reluctant to recuse and Tony Moscato, as I said before today, and also before the House deposition, basically echoed what she had to say and to the extent that her views evolved during the meeting, his views also evolved accordingly. He wanted to basically know that they knew she was supported, and there was a component within the department that had as its number one purpose keeping the United States Attorneys happy and

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looking out for their interest and he was doing that job. I don't think there was any secret that Jerry McDowell and myself and Jack Keeney all thought that recusal was warranted and I don't remember whether Irv Nathan thought that or not.

It's my impression -- basically we hadn't sat down and talked to Phil Heymann about this before. This was where the issue was coming in a technical way for a decision. There would be a decision at the end of this thing and the decision ultimately, I think, was she would think about it, but we knew she had been told the facts that she would need to come to the decision that would be the correct conclusion.

So Heymann's demeanor was very much, I think, as receiver of information and as often happens in these matters, merely articulating the information tends to develop a consensus.

Q Could you explain to me how the expressions -- well, how the views were expressed at the meeting?

A Primarily -- it's not like we're taking a

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vote on something, that's the number one thing. So the intention on anything is to genuinely convince someone of your views. And that's either done through rhetorical questioning, through exploring certain hypotheticals, through real questioning, and that's the way it was done.

Q Was it expressed as my opinion is this or I believe this, as clearly as that?

A I'm sure it's clear, but I may be putting more subtlety to this than is worthwhile. But generally saying I think X, so what? If you say the reasons X should happen are as follows, you don't have to say I think it, but you've actually communicated in a more persuasive way. So people don't sit around saying I vote this or I've been here for 17 years and I say that. You say well, the way I see it, if you do this, that would happen. What would happen if this happened? What do you think would result, that kind of a thing.

Q I guess I'm just attempting to elicit information that would tell me whether there was any confusion as to who was holding what views at the

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meeting.
A Let me ask you something, and I mean this with due deference. Is there any confusion that I think that today's proceedings are largely a waste of time?
Q You want me to answer that?
A Yes.
Q I don't have to answer that.
A Okay. I want you to, but I don't think --
Q I'm just trying to elicit to find out --
A I'm telling you how I draw a conclusion. I would say that there's no confusion among those involved here that I think that this line of questioning is largely a waste of time, but I've never said that to you and I'm not going to say it to you just like you don't tell me whether you think it's a waste. I won't tell you that. I won't tell you unless you show me the transcript of the specific language on this.
At this meeting there was no tape. There was no transcript. I knew what my opinion was. I knew what the opinions of others were. I knew that

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the mission was one of educating someone and one of maintaining everybody's respect, integrity, handling things in a professional way. So we don't -- it's not voting. I don't know how to say it beyond that. It's a real exchange of information where people do change their minds occasionally.
In this one, I didn't go in thinking I would change my mind, and I don't think people familiar with it, meaning Keeney and McDowell, thought that. Maybe there was going to be a point made that would make Phil Heymann see it differently, in which case I would think that if he was convinced to see it differently, those same facts would make us see it differently, because there are very few decisions that are made in the department at my level that I'm involved in that I disagree with the ultimate decision. There are a lot that come out a different way than I would have on my own come up with from the beginning. I'm generally convinced that we're coming to the right conclusion at the end of it.
Q Okay. I appreciate that, and I was just

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wondering if -- I guess I'm still unclear whether people's views were expressed as clearly -- that there would be no conclusion as to who held what views?

A People's views were clearly expressed. In my own mind, I thought that I clearly understood and Jack Keeney and myself and Jerry McDowell thought there should be recusal.

Q That was expressed at the meeting?

A Well, there's no such thing as objective expression. That's just what we were going over. I have an impression and whether it comes from words, body language or defining parapsychology, that was my impression that we were in agreement. I don't know if I went in knowing the outcome or hoping for the outcome. I don't know if I knew how Phil Heymann would come out or what direction his questioning would take, and I know that -- I don't recall Paula Casey ever saying I'm not recusing.

But again, this is something you don't take positions -- you don't take positions that you might have to give up. So by the same token, you don't

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have to say I think you should recuse right now. Now let's get to the facts. It was a meeting and that was the purpose of the meeting.

Q Can you tell me was there an agreement reached at the end of the meeting?

A I think that the consensus was that Paula Casey would think about it.

Q So she didn't make a decision at the end of the meeting or she didn't inform anyone at the meeting of a decision?

A To the extent that anybody was making their opinions firmly known, I would say it was all people telling her to recuse. She went in with the initial inclination to at least find out the underpinnings of that decision or at least to present an appearance that she was not anxious to recuse. I don't think it would have been appropriate in a meeting like that for her to say you guys have convinced me and so I'm out of this. I'll talk to my advisors and she did ultimately recuse herself.

Q Was there any impression that anyone was forcing her to recuse at that time?

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A I did not have that perception.
Q Did anyone in your office or anyone related to these discussions that we talked about today, to your knowledge, have any discussions with Webster Hubbell during this period of time about these issues?
A Not to my knowledge.
Q Have you ever learned of any contacts between Mr. Hubbell and Ms. Casey about any of these issues?
A Not that I recollect.
Q Did you or anyone in your office or any of the people that were related to these discussions that we've discussed today have any contacts with any present or former employee of the White House relating to these issues?
A At the time?
Q Around this same period of time in '93, in 1993, I would say.
A Certainly at my level, the answer is no. I don't know why there would be contact on these kinds of issues. Because frankly, as I said in the House

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deposition, I don't know what the timing was on this, but it was very clear even before a memo was issued to this effect, that Web Hubbell as Associate Attorney General was not part of the criminal aspect of things. The criminal urgent reports, for example, did not go through Web Hubbell.

It's very common in terms of structure for the Associate Attorney General not to be involved with the criminal side. It wasn't even specific to him. That's a very common way of organizing things that all criminal matters go through the deputy.

Q So you're not aware of any of those types of comments -- or contacts above your level either?
A Not that I can recall.
Q Did you or anyone from your office have any contacts with David Hale during this period of time?
A No.
Q Did you or anyone in your office have any contacts with Mr. Coleman during this period of time prior to November 3rd?
A Not that I recall.
Q Do you have any knowledge of any improper

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handling within the Department of Justice of any criminal referral relating to Madison Guaranty Savings & Loan?

A Absolutely not.

MR. FISHER: I don't have any further questions. Thank you.

MR. KRAVITZ: Why don't we take like two minutes. I think that will make this more efficient.

(Discussion off the record.)

BY MR. FISHER:

Q Actually, I have one more question that I need to ask. As a follow-up to something you mentioned before about Ms. Erickson being made part of the investigation at some time, when did you become aware of that and what her role was?

A I think approximately at the time that she was actually assigned that role. I think the decision was made to have somebody from the Bureau collect the information and that they identified Jane Erickson with whom we had worked previously on a number of matters and knew her to be a really good

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agent, that she would be handling that.

Q And what information was Ms. Erickson trying to collect at that period of time, do you recall? Was it related to Mr. Hale's allegations?

A So far as I know, it was firstly to contact the field office and find out what the Bureau field office knew about this or other matters, and it may also have extended to tracking down what they had done previously on RTC-related allegations. I just don't remember. I just know she was the point person. As I recall, she was going to travel out there and get on top of it that way.

Q Was her role related to the allegations of Mr. Hale relating to the loans and Madison and the checks going to Whitewater Development Corporation?

A I don't know if it was defined that way. I thought in terms of timing, that that sounds accurate, but I just don't recall, and I wouldn't know the specific instructions that were given to her by her supervisors, by the way.

I have one other thing I want to say. To the extent that I've suggested some words that may be

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perceived by others to be dissatisfaction with the proceedings or the allocation of resources, they're not in any way directed at the people who have conducted these proceedings, and that I appreciate your professionalism, and I know that you basically have to gather certain information. Everybody has been quite courteous and very patient with respect to everything that's been involved. Thanks.

EXAMINATION

BY MR. KRAVITZ:

Q Mr. Gangloff, I want to start by going back to the subject of the preliminary plea negotiations or discussions that you had become aware of between Mr. Coleman and the United States Attorney's office in Little Rock, and that you and others at main Justice were considering in September of 1993.

And I want to read to you one answer that you gave on page 21 of your deposition on September 29, 1995 in front of the House and ask you a question about what you meant. I don't know if you want to look at it.

A I haven't had a copy of it up until now,

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but I'm looking at it now.

MR. FISHER: What page?

BY MR. KRAVITZ:

Q Page 21, and I'm starting at line 15. It's not really an answer to a question. You're just really adding something. You say "and the thing I was going to make a note on, keep in focus the usability of Hale testimony was the idea that whatever -- you know, whatever kind of an arrangement was worked out with Hale would be worthless if basically any case that resulted was nondocumentary and relied on his testimony and it appeared that he walked away from, you know, significant criminal exposure just to dump uncorroborated information.

Can you tell us what you meant when you said that "any case that was based on information from Hale under these circumstances would be worthless"?

A Well, the first thing I want to note is I wouldn't characterize this as being in the course of pleading this discussion or negotiations because I don't think Hale had proffered enough to warrant that

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kind of consideration.

But one of the things that we were talking about here, and I'll try to be more specific, but to me, this does pretty much say if you're going to make some concession to a defendant in exchange for information and that information consists exclusively of testimony which is uncorroborated, obviously you've always got to be concerned with the credibility of the testimony, not only as a practical matter of reality, is it true, but also with respect to whether a finder of fact would believe that the information is true.

So if Hale were to give us information, and we were to give substantial concessions with respect to that information and that there was no documentary corroboration of that information, basically, Hale having gotten to walk or get some consideration in his case would be a strong factor to consider by any trier of fact in terms of determining whether to believe his testimony.

So if on the one hand, he says the President or anybody else did this, this, this and

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this, take my word for it, but you could make an argument that the government extracted that by giving him undeserved rewards or things that really weren't commensurate with the information that he had, given the general nature of it, it would be what I say here, dumping on uncorroborated information. That was really what the concern was with regard to that.

Q So in this regard, if Paula Casey had jumped at Mr. Coleman's overtures and either given Mr. Hale immunity in return for this unspecified information or perhaps given him a misdemeanor plea, that may actually have resulted in a weakening of any case that might have been brought against the President; is that right?

A That's right, but it's even beyond that, to be quite frank, and this goes both to the kind of no-win situation that you have in these kinds of scenarios, as well as to the recusal issue ultimately. Because if the manner in which information was gotten from Hale was one in which effective evidence was not developed but at the same time Hale was effectively off the hook, then what you

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have is a suggestion that this was all smoke and mirrors and was, in fact, intended to cut a benefit to Hale.

So without trying to judge every situation everywhere, I would say that it would really have been irresponsible at that point to go to Hale and say yes, here's your blank check, basically you fill it in and then possibly be left with absolutely nothing in exchange, which as I say, as time went on, I think he had nothing in exchange.

Q So you think that Paula Casey and others in her office did the right thing in September 1993 by not acceding to Mr. Coleman's demands on behalf of Mr. Hale?

A If I had been there, I would have shared the information with Washington because of the appearance issue.

Q But putting that aside?

A Putting that aside, do I think there was a predicate upon which someone should have been granted immunity based on the information I knew, the answer is no. Because there are procedures in place for

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obtaining a proffer from a defendant under which they become, in a sense, nonbinding on the defendant, but at least the government knows what it's getting.

For example, it's not a situation where you're saying to Hale, trust us, give us everything you know. The typical way of proceeding in these situations is that the attorney would make a proffer of information and if that proffer were acceptable to the government for certain concessions, those concessions would then be offered.

If the defendant felt that he had not been properly accommodated by the government or the government had not followed through on its part of the agreement, then, of course, the fact is that the defendant himself is not on the record as having said any of this. And the fact in this situation is also that it would involve culpability by the defendant so the defendant would have preserved his own Fifth Amendment right and his own ability not to recollect, et cetera.

So there's a procedure quite well known and quite routinely used to relay to the government

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information which is material, and here that was not being done. The information was not being done. The information was not coming.

Q You said a moment ago that the predicate for giving Mr. Hale immunity had not been laid by Mr. Coleman. Had a predicate been laid, in your opinion, for giving Mr. Hale a plea offer to one or more misdemeanors?

A No. There was no predicate in my mind for any concession.

Q Any concession whatsoever?

A Any concession whatsoever. And the one concern we did have, though, was ultimately -- and I forget how it developed exactly -- but Coleman would be in a position to say well, my offers weren't fairly received, and that's one of the reasons we wanted to be sure he had the avenue coming to main Justice because just as I've described to you -- the problem is if you give Hale this deal and he walks away and doesn't get stuff, doesn't give you good evidence, and the first thing you've done is you've undermined a lot of investigative steps that might be

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taken.

And the other problem that you have is if you let Hale walk, as I said, it looks like you've given him a benefit. If on the other hand, you don't give Hale the benefit, then you can be accused of not taking the information because you don't want to hear bad news.

But, of course, that analysis misses the point that if you do that and say we don't want bad news, then what you've done is you've forced the defendant to go to trial and if you force the defendant to go to trial, he has a public forum. So ultimately that analysis thing doesn't hold up, that to refuse to give him a deal because in the short run you wouldn't get information, that somehow that would ultimately protect the person the information is about. I think that's -- I don't think that follows through the actual process in a realistic way.

Q Just so the record is complete on this, let me try to summarize the last part of what you just said, and if I do it inaccurately, just let me know. But I think what you're saying is some have or may in

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the future make the allegation that Ms. Casey refused to give Mr. Hale a deal, and thereby kept information from her office that she otherwise would have gotten from Mr. Hale in order to protect the President.

And I think what you're saying is really the contrary is true, because by not giving Mr. Hale a deal, she was in effect, if that had gone on that way, would have forced Mr. Hale to go to trial at a public format which Mr. Hale could have set forth his allegations about the President.

A Right, and that's also --

Q And that would not -- obviously that would not protect the President?

A And that's corroborated by the fact that ultimately, his attorney does make contact with the press seeking to gain some advantage for himself by doing that. It just doesn't make too much sense to me, I guess, as I try to think of how you analyze this situation to reach a nefarious conclusion. I guess that's the problem I have on it.

Q In other words, you don't see any nefariousness in what was going on with this?

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A No. I think it would have been irresponsible -- if we wanted to assume the worst, let's say I don't want this information. I don't want to know what it is. I don't want it to come to public light, et cetera, then you make the deal with Hale, and you give him something good. Then you have control of the information, and he has no incentive to do anything with it.

So you could take it like this. You could indict him publicly, destroy anybody's argument that he could make consensual calls, give everybody a good opportunity to destroy any relevant documents, make a big splash that you gave him this concession because he's going to come through with information. He could even come out and say it's going to be information on the President. By doing it, you're making sure that the information itself is evaporating, or you could decide to do it quietly and not tell anybody.

But the worst thing, it seems to me, is get the guy all annoyed and you're not going to get what you asked for unless you actually come up with

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evidence on the President. We're not giving you a deal. So I sort of get lost in trying to follow that through.

Q What's your understanding of how strong the case against Hale himself was?

A I think someplace I described it as kind of a cookie cutter case. I didn't recall it as being a difficult case with respect to the underlying stuff on him.

Q "Cookie cutter case" meaning easily proved?

A Meaning that the elements were there, that if they took him to trial, they would win. It would be in his interest to do anything he could to get the charges reduced prior to trial because it wasn't like he thought he had a chance he was going to go to trial and walk out.

Q What was the magnitude of the charges against Hale?

A In terms of numbers and stuff? I don't recall.

Q But suffice it to say, there were serious felonies from which a misdemeanor plea or an immunity

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agreement would have been a substantial reduction in what he was facing?

A My understanding is it would be a substantial reduction. On the other hand, if anybody came in with specific information on a cabinet level official or the President of the United States, you're always going to balance and Hale was -- is pretty far down the line, and the nature of the offense is it's not threatening the public safety. He's not in a position to repeat the stuff. His reputation in the banking community is already damaged, et cetera.

So I could understand circumstances under which you could generously accommodate him in exchange for certain kinds of information that he might have. But I don't see any indication that he actually had that information.

Q Tell us -- I mean, I know you've touched on this at least twice now, but tell us exactly what your thought process is for saying what you just said, that sitting here now and looking back on what's transpired over the last two years since

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September 1993, that it's now your judgment that Mr. Hale never really had any real evidence against him?

A I don't know if you've had access to Mr. Hale. I don't know what -- I didn't check his transcripts to see what's happened in the various proceedings involving him, et cetera. But I still don't understand -- still don't know what criminal allegation he's made against the President. I still don't know an articulatable allegation of specific criminal conduct against the President even today.

So to look at the analysis part of it, it was in his interest before he was indicted to share that information with the United States Attorneys office. When it was clear they were not going to accommodate unless he had specific information, it was in his interest to approach main Justice.

Rather than do that, his attorney chose to go to the press, essentially destroying his viability and many investigative aspects of the case. Despite the fact that he went to the press with an intention of clearly setting himself up as a scapegoat or in

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some way undermining the case against himself, I don't recall having seen in the press any allegations of specific credibility against the President which had Hale as a source.

And then you have him actually get indicted, which means the judgment was made that whatever he had wasn't useful enough to give him any better a deal than that. He's still far enough down on the chain of things, it's not like you've got -- again, to use a cabinet level official as an example, it's not like you have a cabinet level official where people are concerned he got too good a deal for the information.

Everybody perceives this as the situation if Hale had actual evidence of misconduct by the President of the United States, nobody would complain if Hale had nothing happen to him in exchange for that information. Everybody wants the information.

But by the same token, you can't go around giving people a "just take my word for it" kind of an exchange and giving people concessions when they're not producing any information. And I don't know --

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as I said, I don't know what the Independent Counsel is up to on his investigation, but I would be quite stunned to learn that Hale actually ultimately turns out to be the source of credible proof against the President of any criminal activity.

Q Are you aware that Mr. Hale is cooperating with the Independent Counsel's office?

A I'm not aware of the extent of it.

Q Are you aware that he's --

A I've seen reference to that, but again --

Q Are you aware that the Independent Counsel has issued an indictment of defendants, including Governor Tucker --

A Yes, I'm aware of that.

Q -- based on transactions involving Mr. Hale?

A And I don't know the specifics of the deal that was made, but in a sense, taking this as part of an analysis where you say okay, Hale is giving up the information that he had, well, clearly the instincts were correct that you don't give concessions until you get the information and that's the same approach,

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as I understand it, that the Independent Counsel took.

Q Does the fact that the President was not part of the indictment that we were just talking about, is that consistent with your sense that --

A That doesn't mean -- the fact that the President or any individual is or is not part of a specific indictment doesn't mean anything to me because the timing of an indictment and the type of naming particular parties and the ability to seal indictments, all of those things, you know, I appreciate that in some respects it would be nice if I said that must put him in the clear. I don't put him in the clear. He's still out there and if there's evidence against him, he should be prosecuted.

All I'm doing is saying in the specific context of the information that came from Hale, certainly back at this time and even to this day, the things that he did were not consistent with actually having credible information. He did not pursue the appropriate avenues of presentation, and when they

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were made known to him, he did not make the presentations and the type you've just described to me that's based largely on public reports indicates that when it's all over with, you find out that you get all the information that the putative defendant has ultimately, not by believing him but by making him produce first. That's what everyone was striving for in this and that's how the U.S. Attorney came up with the posture they took in the case.

Q How did Mr. Coleman's going to the press interfere with Mr. Hale's ability to provide assistance to the government?

A Well, in the ways I described once he went to the press and the matters became public, Hale could hardly call -- for example, if Hale had as part of his claim that a particular individual drove Clinton to a certain location for a particular meeting or that somebody else attended that meeting, once the matter is in the newspaper, Hale can hardly pick up the telephone and say as a ruse at the government's suggestion hello, so-and-so there may be, something coming up on this, so don't talk about

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it or do you remember when this happened? You can't resurrect that stuff. You can't even say hey, let's get together around Jack's house and meet because there's a focus on this. Now, let's get our story straight kind of a thing. You lose a lot of the ability to do that.

You can still try to make it look like -- I guess you're trying to obstruct an investigation, but once the investigation has become public, there's that problem, and the additional problem is you allow people who may have relevant documents not only to destroy documents, but people who have relevant information to get together with others and arrange stories, et cetera.

So even though you've taken yourself effectively out of the use of loops in terms of contacts, you put the other people who are allegedly involved in a situation where now they know something is up and they have an incentive to come together.

And I suppose another thing that comes in a case like this, by completely airing the dirty laundry in terms of the trouble you're in, you've

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heightened the fact that your own credibility is really contingent on the fact that you're getting something from the government. So if it gets written up in a way, that makes what Hale did seem really, really bad. It makes him all the less credible when it comes time for him to see that stuff disappearing in terms of information.

It just doesn't make any sense. Why a defendant would -- people do things for their own interests. It's as simple as that, and why in this context of seeking -- purportedly seeking a plea agreement with the government, someone would go out to the newspapers just doesn't make any sense, if they actually have useful information.

Q But going to the newspapers or going to the newspaper as Mr. Coleman apparently did, rendered his offer or his claim of having made an offer to provide assistance in some clandestine way through Mr. Hale essentially worthless?

A I would say that.

Q You would say that?

A Yes.

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Q During any of your discussions in Washington in the fall of 1993, was there any discussion about Mr. Coleman's experience as a criminal defense lawyer?

A Only that there may have been some surprise expressed that he didn't realize he could come directly to Washington and maybe a comment in the nature of rolling your eyes, well, everything we understand is not consistent with his going to the press. If what we're hearing is genuine -- and we basically try to assume -- if you assume that people are nondeceptive and acting for the right reasons and then you look at their actions, typically, it kind of jumps off the page when they're not.

Instead of saying he's a dope, you start out saying he's smart. If you start out he doesn't know what he's -- if he's lying to you, he's telling the truth. Let's assume that he's a smart guy and he's telling the truth about everything, that his client actually has information and this has what's happened next and this has happened next. How do we explain this next part? It didn't fit in.

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From that standpoint, we knew that, but -- sometimes it's just -- a lot of times you think the guy is in over his head. He just doesn't understand what the process is, but still why would he do it this way?

Q Put another way, Mr. Coleman going to the press as he did appeared to be inconsistent with his claims first that his client had information or important information to provide and second that his client was truly interested in providing that in a way to assist the government?

A Yeah, I would say that especially because it wasn't predicated by a threat to go to the press. That wasn't even the issue that was involved. It was just doing it.

Q In your experience, is it widely known by defense attorneys around the country involved in cases like this or any white collar criminal cases that main Justice is available to provide an audience?

A I don't know. I don't want to speak certainly for the majority of criminal defense

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lawyers, what they know and how they keep themselves abreast of the situations. But I think if anybody went so far as to make a contact with any advisor from the Washington white collar area, that they would be advised that the threshold for getting an audience is really not very high. And if you're talking about a political defendant or you're talking about information with respect to a political figure, it's very shocking how these --

Q Happens routinely?

A Frequently. People get audiences -- people get audiences up through the Deputy Attorney General and even the Attorney General's level at times when there's really an issue. They make it sort of a distinction as to what's a policy issue and what's a factual issue and those kinds of things.

Generally, it's very easy to get on board with Washington.

Q I want to focus just for a few minutes on the recusal issue relating to Paula Casey. At one point -- and I'm paraphrasing, I apologize if I'm doing it less accurately than I might -- I think at

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one point where you were talking, as you have on several occasions, whatever Ms. Casey did would be potentially subject to criticism, whatever she did on the case. If she didn't recuse herself would ultimately be subject to criticism. I think you said that in the final analysis, the point was that she was out of the case at the right time.

Do you remember saying something along those lines?

A Well, I think -- regardless of whether I remember saying, I think she was out of the case at the time.

Q Do you have any concern that Ms. Casey took any action relating to the Hale prosecution before her recusal that she should not have taken?

A Firstly, I'm not aware of any specific actions that she took concerning the Hale prosecution. And secondly, regardless of my opinion as to whether we should have known about it a little earlier or not, the fact is I don't think any step that occurred prior to the recusal had a negative impact on the ability of the department to

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investigate the case with the possible exception of making the press aware of it, but that was something that was fully within the control of the defendant.

Q Sorry to be jumping around. Actually, just a couple more questions about the Hale prosecution itself. You've already told us that you think the elements were approvable and had the case gone to trial, the prosecution would have won. Do you have a sense as to how long a trial that would have been, how many witnesses it would have involved?

A I don't.

Q Do you have a sense as at the whether there were any complex legal issues involved in that case?

A No, I don't.

Q I want to finally direct your attention to the September 20th, 1993 meeting that you testified about previously. You testified that Irv Nathan reported to the others present that he had gotten some information from someone who he didn't want to identify initially. And I think you ultimately -- you told us that Mr. Nathan ultimately identified his source as a New York Times reporter?

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A I think that's right.
Q Was that Jeff Gerth?
A I don't specifically -- I just don't specifically recall. That could have been the name.
Q What exactly did Mr. Nathan say about his desires not to disclose the identity of the New York Times reporter?
A Not much. I think he basically said that he had some information about Hale's going public on this and somebody may have said who told you, and he probably said I'd rather not say if I don't have to, and we probably said what's the information and you probably do have to, and he told us the information, and I think Keeney probably said well, you have to, and maybe he said can I tell the guy first or something like that. It was no -- there wasn't like there was resistance from Irv on that.
Q Why was it that Mr. Nathan had to identify his source?
A I don't remember the specific reason at this point.
Q Can you think, just analyzing it now --

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A I mean, you know, if we had to follow up with respect to the allegations, what was happening, we couldn't get a proffer from Hale, and essentially, what we were being led to believe was that a thing in the nature of a proffer had been relayed to a member of the press.

So if that person had the information and it was evidence against the President, for example, then we wanted to know who was the best source of that information. It wouldn't be Irv at that point. The best source of information we would have would be the reporter at that point.

Q Now, you indicated that Irv may have said or asked well, can I tell the reporter first before I tell you who it is. Did he say why he wanted to do that?
A The only reason I'm saying is he may have wanted to say that -- in my experience, generally, when somebody is going to give you a confidential source, somebody doesn't get identified out of the blue as a source. Particularly as a courtesy, if you hope the person is going to provide information to

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you in the future, you want to be able to do that and facilitate it as well if you can saying do you want to come in to talk about it or what.

Q I'm going to show you another copy of, I think, the same document that you looked at before, but these are your -- I think you've identified these. This is a notebook or part of the notebook that contains notes of yours from September 20, 1993.

A Yes, this looks like the same thing I looked at earlier, only a different copy of it.

Q Right. And on each page, it says C2 instead of C1, but that's something done internally at the Senate, and I think that's probably the only difference between this copy and what you've seen previously.

A Okay.

Q Could you turn to page 007739, and maybe if you could -- this is a page actually you were not asked to look at previously today. If you could maybe just read through for us what the notes say and maybe as you go along interpret them for us, that

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would be great.

A I'll try.

Q And if this actually starts on the previous page, I wasn't able to tell that, but if you think it does for context --

A I should give this little caveat. I probably could have said it earlier. I know I told the Independent Counsel and I told the House. I forgot to tell you.

Generally, when I do these notes, they're putting something into my mind or telling me something that I've got to follow up on very quickly so they have a very short shelf life. This writing, which maybe doesn't come out in the transcript here, is incredibly difficult to read, although it's some of my best.

Q I think we can stipulate that it's difficult to read.

A But the reason for that is I'm not writing journals. I'm just making quick notes and moving on. So I don't usually have the ability to read this stuff after a relatively short period of time. But

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having said that, I'm going to try to read this, and I'll try to read the abbreviations in as real words.

"Madison Guaranty" --

MR. SGRO: For the record, he's starting on 7738.

THE WITNESS: I'm starting at the bottom of 7738. "Madison Guaranty S&L in Little Rock made loans to Clinton/Tucker Whitewater realty. By '86 loans unpaid. The auditors would have seen loans -- Madison loan" -- well, maybe I should tell you what this is meaning, however you want to do it.

BY MR. KRAVITZ:

Q I think the best thing to do is first to say what it says and then to tell us what it means.

A "Loans impair" --

Q This is what it says?

A Right. "Audits would have seen loans. Madison loans in Provident e.g., large loans on undeveloped land. Pressure to shore up Hale for Madison audit. Clinton called Hale's brother to urge use of SBIC funds. There was a meeting. Jim McDougal" -- looks like it maybe says "ally," and

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that's how they refreshed my recollection on that at the House deposition, but "ally of Tucker/Clinton," and then it looks like it says -- looks like it says "Fulbright" -- I don't know what that next word is. I'm sure I would know it if somebody else told it to me. "Connection," maybe that's what it says, "Fulbright connection." And then "JM" with an arrow, "charged and acquitted re: S&L matter." And there's a little arrow, and it says "McDougal (also beneficiary of Madison) called Hale for meeting with McD office. "Hale drives to office" -- or "Hale driven to office by local sheriff. Clinton/McDougal present. Urged funds for S&L from Hale." That makes sense to me. I mean --

Q Was this information that you've just been reading from your notes, was this information that Mr. Nathan told those assembled at this meeting on September 20th that he had learned from The New York Times reporter?

A I'm not sure, but it certainly could have been. Yeah, I think that's what this is. This is the first time I recall having remembered that, but I

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think this is information coming from Irv Nathan, and this is what he had learned from the reporter, and this would also show why it was important to know his actual source because it was quite detailed.

(Discussion off the record.)

BY MR. KRAVITZ:

Q Actually, I think your recollection has been accurately refreshed, but let me, just so you're more sure of it, let me show you another document which is marked 005169 through 005171, September 21, 1993 memo from John Keeney to the director of the FBI, subject "David Hale dba Capital Management Services, Inc." I don't know if you've ever seen this. Why don't you take a few moments to read it and tell us if that helps refresh your memory as to where the information in your notes came from.

(Witness reviewed document.)

A Okay. I just skimmed this and the reference to "department official," I take it, is to Irv Nathan, and whether Irv gave us Gerth or whether I remember Gerth because he's mentioned in this and he was directly identified by the assistant in

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Arkansas as having contacted the assistant, I don't know. But this is certainly consistent with my memory, although I don't recall ever having seen it before, and ordinarily, I wouldn't have, given that it's a communication from Keeney to the director of the FBI.

Q Is it accurate to say, then, that the New York Times reporter, Gerth, at least as of September 20, 1993, had provided many more specifics as to Hale's supposed allegations against the President than Hale's lawyer had to the government?

A Well, I think that that's true, just based on this teletype that came in from the U.S. Attorney's office, and if we make the additional assumption that he was Irv Nathan's source, I think that's definitely true. And I also want to say I saw in there the reference to the fact of seizure of some records and the possible fabrication of a record by Hale.

In answer to an earlier question, we had talked about that and in fact, it's on page 007740, and I didn't know whether that was speculation or

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what it was, but now taking the memo you just showed me together with my notes and knowing what was happening at this meeting, that's what my notes are reflecting as well, that same scenario, that there was a document there that the attorney is now claiming is missing.

Q Was it your sense that Coleman was trying to negotiate with the government by using the press?

A I'm sure he had some intention in contacting the press that was consistent with his client's interest.

Q You just couldn't figure it out?

A Yeah. I don't know what it was, and even to the extent in that memo that you just showed me, there's a reference to his having been offered a felony three, that's sort of a no-win/no-lose situation from the government's standpoint. Maybe he has the information in a follow through, maybe not. You've got the felony, and even without information coming from a defendant, that wouldn't be an unusual plea agreement in that kind of a case. So for the government to say we'll agree to give you one felony,

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that's not really saying anything.

MR. KRAVITZ: I think that's all I have. Thanks.

MR. FISHER: I just have a few clarification questions.

EXAMINATION

BY MR. FISHER:

Q Just to make it clear, whatever information you were working on at this time period of what evidence Mr. Hale may or may not have had or may not have been willing to offer, that was information you had based on what the Eastern District of Arkansas U.S. Attorney's office was telling you or the Department of Justice; is that correct?

A Well, it's clear that Irv Nathan was providing some information as well which was not coming from the U.S. Attorney's office. So to the extent that in our previous questioning I suggested that the information was coming from the U.S. Attorney's office because I didn't think it was coming from Coleman, indeed there is another source which was providing information.

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So I would guess that it was coming from the U.S. Attorney's office with respect to procedure/process kind of stuff for the most part, but I don't really have a way in my mind to distinguish what was coming either from the press via Irv or from the press via the U.S. Attorney's office or from the U.S. Attorney's office as original, if you sort of get what I'm saying, because the guy from the U.S. Attorney's office was saying that Gerth was giving him information about things that Hale was saying, and that he was giving us that information as well. So there's at least three avenues of information now.

Q But what I was trying to elicit is what information you had regarding what Mr. Coleman or Mr. Hale had been willing in the form of evidence to offer to the U.S. Attorney's office in Little Rock in exchange -- you were relying on what they were telling you about that?

A Oh, yes, I understand your question. We were relying on the United States Attorney's office to describe the relationship with Coleman insofar as

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Coleman, in fact, didn't have any relationship with main Justice at that point. We were encouraging them to have one.

But at the same time, it may very well be because I didn't read this memo concerning the contact by the reporter to Irv Nathan carefully enough, and I don't recall specifically enough. The reporter may have paraphrased to Irv Nathan something about the negotiation process and Irv Nathan may have repeated that as well.

Q You had made a statement about the government's case against Mr. Hale at that time. Is it your understanding that the allegations that he was later indicted for were unrelated to the allegations he was making that was the subject of the September 20 meeting with regard to Governor Tucker?

A That's my general understanding, but I don't have a specific predicate for it.

Q And when you were describing the case against Mr. Hale in saying that it was your understanding that the elements were there and they would win at trial, what was the basis for your

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knowledge of making that statement about Mr. Hale's case -- or the government's case against Mr. Hale?

A That was a general impression. I don't remember discussing any defects in the case. And defects in the case would have been something you would look to in determining what an appropriate disposition and plea agreement would be. So I just don't remember anybody coming up with anything that would have been difficult proof problems.

And the other thing I should clarify, when you say not "related to," by some way of thinking, I don't know what's not related to Whitewater or -- I don't know what you mean by "related to," but my general understanding is that the charges themselves were not predicated on the same activity.

Q Thanks for clarifying. That is what I was getting at. But as far as the strength of the government's case against Mr. Hale, you didn't review the case file or go over it in detail?

A No. I don't recall any serious concerns with respect to the underlying case. That was a fairly routine case, and to characterize it as in the

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course of what otherwise was a very routine matter, the putative defendant came up with purported information that would implicate a political figure, and that's what changed it from being a routine case.

Q I guess I don't understand what you mean by "routine case."

A How many cases where somebody defrauds the SBIC Washington review results in Congressional hearings, not the routine ones.

Q I guess what I was trying to elicit is whether you did a review to understand the strength of the case --

A I don't recall having done that. It may have been done in the frauds section, but the relevance of the strength of the case, there's really not much relevance to it.

Q I was just wondering what --

A From my standpoint at that point. But I think it would have come up in the sense that if we said this is a lousy case, ordinarily they would knock them down to misdemeanors anyway to get the plea. You wouldn't say normally we make

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misdemeanors, let's not do it for this one. We said hey, we worked on this. It's part of an overall investigative strategy. It's ready for trial. It's ready for indictment.

And I do recall a conversation along the lines of we don't want to derail this. We don't want to necessarily interfere with the United States Attorney's office. If the two things can be separated, we allow one to proceed while we pursue the other. Let's do that.

It's with reference to that area that I mentioned that the fraud involvement with respect to actually going out to handle the Hale case, as I recall, that had evolved more slowly because we were reluctant to do that if we didn't have to.

Q The evidence was being developed out in the Eastern District of Arkansas --

A Yes.

Q -- to present the indictment which they did present on September 23rd?

A Right.

Q And main Justice didn't have a part in

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presenting that indictment?

A Not that I'm aware. They may have gotten guidance from fraud on the technical aspects or something. Not that I'm --

Q The relative strength as far as main Justice knew, was based on information they were getting from the Eastern District of Arkansas?

A So far as I know, correct, but I assume the FBI was involved in the investigation.

Q Sure.

A And they got involved so if they had come back and said -- I mean, we deal frequently with the Bureau in formal and informal ways and if Jerry McDowell, in reaching out to Dorch and Jane Erickson, said this case, there's nothing to it or the case is really faulty or the case was messed up for this reason or that reason, it would have been communicated.

So my recollection is the information was coming but information to the contrary, sort of like saying yeah, we only saw green lights, it wasn't because the red light wasn't working. It's because

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they were all green lights. I don't recall it having been identified as having defects in it, and I don't recall extensive discussion on that.

But I think in the normal process, if it had serious defects, they would have been identified, if not by the United States Attorneys office, then by the FBI and then subsequently by the frauds section when they stepped into it, and then ultimately by the Independent Counsel, I suppose.

Q Would allegations against a governor of a state normally or in the general course come to main Justice?

A They would -- first, they'd have to be federal criminal allegations.

Q What I mean was, if there were federal allegations and it went to the U.S. Attorney's office in the field of that state --

A Most field Attorney's offices would handle that directly.

Q They would?

A They would. And sometimes they would seek some assistance from main Justice. Their policies

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change at different times, but there are certain statutes if you charge a violation of the Hobbes Act during this period of time, you would have to get -- I'm going to give you the shorthand for this.

But if you charge a violation of Hobbes Act under the official rights prong of it, you would need departmental approval through the public integrity section in order to indict that case, and if you do certain things with respect to RICO organized crime you have to get certain approvals within the department.

But generally, when you're talking about a governor and it's a sitting governor, there are lots of different arrangements and it's not uncommon to have somebody, for example, from the public integrity section -- John Campbell, who's at the U.S. Attorneys, did it with the prosecution of Arch Moore to be assigned to work on that case, same thing with state legislators, but it wouldn't happen in the Southern District of New York, for example. The more sophisticated the office, the more complete the office is, the more experienced they are, there are

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plain practical things.
There are some districts where nobody can remember having done a public corruption case in 40 years. Not that they don't have any public corruption, but it means that there's at least not experience in the area so those kind of offices are more likely to reach in.
Q Reach in -- out to main Justice?
A To main Justice. If you go to the District of Columbia, you'll see that Eric Holder used to be in our office, Marshall used to be in other office, and John Campbell used to be in our office. There's not a whole lot to tell them about a particular case. It deals a lot with personalities and resources that are available.
Q Just to make it clear, Mr. Gangloff, when you testified earlier that it was your view -- and please tell me if I'm mischaracterizing -- that obviously Mr. Hale's information wasn't adequate because he did get indicted --
A I'm judging --
Q -- that is again based on what your

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information was at that time, which was September 23rd?
A No, it's not.
Q Explain it to me what the basis for that opinion is.
A I don't know what you mean exactly, inadequate for what? What I'm focusing on is a time period where the United States Attorney had essentially rejected a generous plea accommodation to Hale, and that would be the time when we first became aware of what was going on. In addition to what I knew then, which was coming first we decided mostly from the U.S. Attorney's office, possibly from the Times from Gerth via the U.S. Attorney's office and certainly some also from Irv Nathan from his reporter contact.
Those are the things that I knew then, and they led me to conclude at the time that -- although they were developing, so it's hard to know exactly what was happening at a particular time. The fact is when we first saw this, it didn't reach the correct threshold. And what I'm saying is subsequent events

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have strengthened my opinion in that regard because I haven't read the article in The New York Times where Hale spills it all and makes a case against the President, and I haven't seen that any place, and I haven't seen, in the context of his trying to get a good deal, evidence that's come out with respect to the President.

Maybe the Independent Counsel has gotten such information from him. But again, I look at that and say well, that supports the decision that we made because he got it not by saying -- I assume, not by saying tell us what you want later, but we'll give you a deal now, but by saying listen, you tell us now what you've got and here's what we'll do with you. I don't have any reason in retrospect to question the decision.

To put it the other way, you know, if the next week we had read in the Times a very detailed report full of documentary or purported documentary evidence on the President, then I would have taken pause. But I still would have said, hmm, I didn't know that last week when I made the decision.

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So when that decision was made, based on all the information that we had, it was a sound decision and I'm not aware of any facts that developed since then that would cause me to change my opinion on that.

Q Did you ever have any involvement with the investigation regarding the case against Hale or the allegations that Mr. Hale was making at the time subsequent to November of 1993?

A Well, at some period of time around in that time, whenever the frauds section sent three full-time attorneys down, they pretty much assumed responsibility, and there was some discussion about sending a public integrity person, but there wasn't a predicate for that at that time. There were no public officials within the ambit of who we deal with it and Jerry McDowell is very experienced in that area, so he could tell us.

I did mention that there came a time where I was involved in helping to draft the scope of authority for regulatory Independent Counsel. But aside from that, in terms of day-to-day investigative

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type stuff, I may have been copies on some urgents or something, but we didn't have a public integrity person there. We were still waiting to see some specific credible information indicating that a federal official was actually involved in criminal misconduct.

Q And you haven't been involved in the investigation that's being conducted by the Independent Counsel's office?

A Only as a witness.

Q So you have actually no idea as do any of us, other than what's reported in the press about what that investigation is entailing or what allegations are going to come out of it because it's still continuing?

A I have a broader idea because when increases to jurisdiction are discussed, certain issues or spin-off cases are involved. Sometimes I'm involved in those, but none of the information that I have affects the fact that I don't have an intimate knowledge of what Hale is or isn't doing or what information he's got or whether the Independent

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Counsel intends to indict the President. I don't know.

MR. FISHER: Thank you.

MR. KRAVITZ: I actually have one more brief set of questions.

EXAMINATION

BY MR. KRAVITZ:

Q Ms. Fisher asked you whether in September of 1993 you and others at main Justice were limited in terms of knowing what Mr. Coleman had actually offered or not offered in terms of details of what Hale could provide to information that was provided to you from the United States Attorney's office in Little Rock.

A Right.

Q I'm going to show you a series of fax cover sheets and letters that came from the U.S. Attorney's office in Little Rock to Mr. Keeney in September, specifically on September 20 and September 21, 1993 and ask you to take a look at these and tell me whether this might refresh your memory as to whether there really was information coming to main Justice

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about the communications between Coleman and Casey's office, in addition simply to Casey's oral reports on those communications.

For the record, I'm going to show you documents 2050 through 2052, 4666 through 4673 and 4680 through 4681 and 5166 through 5168 and finally, 7654 through 7657.

A Before I even look at them, let me clarify one point. I didn't mean to suggest that if information came from the United States Attorney's office, it came from Paula Casey exclusively or even primarily. I was just taking that to be anybody in that office.

Q My point really is, does this refresh your memory that your office or main Justice received documents showing exactly what the written communications had been between Mr. Coleman and the U.S. Attorney's office in Little Rock as opposed to merely having received Ms. Casey's or the Little Rock U.S. Attorney office's oral report on those communications.

(Witness reviewed document.)

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A Okay. With respect to this fax, which is a cover sheet 002050 and the two pages that are attached, 0251 and 252, a September 21, 1993 letter, I'm not sure whether I had seen it previously or not, but it's generally consistent with my recollection on matters that I've talked about pretty extensively, that we wanted to be sure that Coleman had received a response indicating that if he had something, we were interested in hearing what it was.

And this, I think, is just intended to make a record from Paula Casey's standpoint that, in fact, the person -- or Coleman declines to provide specifics and emphasizes the fact that he's going to the press about it and given if the timing on it, September 21st, it's generally consistent with my recollection as to what was prepared at that time.

And the style of it, by the way, indicates to me that it was, in fact, drafted from the Eastern District of Arkansas and not main Justice because of the familiarity and the tone. And 004666 is a letter dated September 16th --

Q From who to who?

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A To Coleman from Paula Casey. I don't remember having seen this, but this again, is consistent with our interest in knowing what communications had been made previously to Coleman with a view towards being sure he knew what avenues were open to him. And this is -- I'm just looking at the September 21st letter, which says it was in response to a specific Coleman letter.

Q Actually, if you want to look through the packet and see if there are any letters from Coleman to any officials in the U.S. Attorney's office in Little Rock, they're not necessarily all in the right order.

A I see one to Paula Casey, 004668 and 469, and it's to Casey from Coleman.

Q And what's the date on that?

A September 15, 1993, and I -- so that's the letter that was being responded to by Casey's September 16th letter, I take it. I just read the September 15th letter. I don't remember having seen this before. It's a little startling to me in one respect, and that has to do with the date of these

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events, et cetera, because it was long after this that Paula Casey actually recused from the case.

But it seems to me that Coleman has clearly identified an interest in floating a theory that the reason they're not cooperating with Hale more is because they may want to protect some political figures, and the reason I find that kind of puzzling is the nature of some of the questions suggest that Paula Casey didn't want to recuse and that somehow it would have ended the investigation.

And basically, as I look at this letter, it appears to me that the cat was clearly out of the bag, if ever it was in there, that a clear allegation had been made that there would it be problems down the road no matter what happened with respect to Hale.

And when I look at Casey's response, which pointed out -- let me make it very clear -- this is on page 002051, "This office and the Department of Justice has been and remains interested and willing to obtain any and all information your client has," and it goes on to say we'll prosecute anybody who

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has -- on the September 16th letter, it says that they'll prosecute anybody who should be prosecuted.

I mean, it just seems to me that the defense attorney has carved out a little bit of a territory of what he perceives to be a vulnerability and the U.S. Attorney is coming directly back at him and saying that's not the case.

Again, to make this clear, the part to me that's somewhat startling is I don't think I realized -- I didn't remember that the defense attorney is the one who identified this as a possible defect in the way the Hale matter was being conducted.

And to the extent this evidence, at least as of September 16th, having identified that issue, I might have a misperception of some of the things I thought in terms of the proceedings that we're now involved in, because it seems to me that is fairly squarely laying the groundwork at Coleman's request that she be taken out of the case, but it's also documenting the fact that if she doesn't get out of the case, there's going to be a paper trail that

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suggests that her reason for staying in the case was to quash the inquiry and not would there be a paper trail, but that there was a paper trail. I don't know if that makes a lot of sense to you, but sort of why it's perplexing to me.

Q Can you tell from the fax cover sheet and also information along the top of all of those letters whether those materials were faxed to main Justice?

A Well, they all say from U.S. Attorney's office, and they're --

Q Is there a fax cover sheet that goes with those letters? I think there are actually several of them.

A But I don't see -- the first one is 002050 and it says "outgoing transmission" -- oh, it says to "John Keeney," and that covers -- it says "number of pages, two." So let's assume that covers the next two pages, which is the two-page September 21st letter from Casey.

And then there's another letter in the pile, which is the letter to Randy Coleman from Paula

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Casey. It actually says "internal tracking," that this is from the U.S. Attorney's office and it's page 4. The page under it -- appears to have come in a little bit earlier and is page 1 and then comes 2 and 3. If that 4 follows that 1, 2 and 3, which is not consistent with the Bates number, but otherwise consistent with the package in terms of cover sheet, then, in fact, it would say -- oops, sorry, number of pages, three. Would be right, three pages consisting of two letters and that's to John Keeney.

Q Those are materials that appear to have gone to Mr. Keeney on September 20 and 21, 1993?

A They appear to have been addressed to him, and they appear to have come from the U.S. Attorney's office. But in terms of information, I also see that some of the information is being provided by Coleman, even as specifically as what it is he expects in terms of misdemeanor, and I think underscoring his reluctance to provide specific detail.

Q I guess the bottom line that I was hoping to be able to establish from your review of all of these letters was that I think contrary to perhaps

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the implication of questions you've been asked previously, main Justice had documentary evidence of the communications that had gone on between Coleman and Ms. Casey's office that presented the communications from both sides and didn't simply consist of Ms. Casey's or someone else in her office's summary or description of those communications. Is that accurate?

A Well, yes, and the suggestion that all the information -- it seems to me there's a twofold suggestion to the fact that the information is coming exclusively through the U.S. Attorney's office. One is they may be selective in providing information to us and secondly, it may have a certain bent to it. With respect to the selectivity, it's my recollection that we asked for the specific information. We asked for the exchange of correspondence, and I had not recalled that the materials included stuff from Coleman.

But again, it comes from the United States Attorney's office, but not even as a result of their discretion or culling through the sufficient, but

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basically, we basically believed we requested and were receiving what we believed to be a complete record with regard to this correspondence. It was definitely coming from Coleman as well.

MR. KRAVITZ: That's all I have. Thank you.

EXAMINATION

BY MR. FISHER:

Q The information that refreshed your recollection, if you had a recollection, of what Mr. Coleman had said about the possible appearance problems in that letter, does that change your opinion at all about when Ms. Casey should have recused herself?

A No. In fact, it doesn't really refresh my recollection as to anything. All it really does is provides documentary evidence, usually the best kind, as to where information was coming at the time, but I knew collectively I had the information. I just didn't know the source.

MR. FISHER: Thanks.

MR. KRAVITZ: Thank you.

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THE WITNESS: Thanks a lot.

(Whereupon, at 2:15 p.m., the deposition was concluded.)

JOSEPH E. GANGLOFF

CERTIFICATE OF NOTARY PUBLIC & REPORTER 179

I, JULIE BAKER , the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Julie Baker

Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 30, 1997

RPTS WATT

DCMN MAYER

COMMITTEE ON BANKING AND FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

In the matter of:	
MADISON GUARANTY SAVINGS & LOAN	DEPOSITION OF JOSEPH EDWARD GANGLOFF

Friday, September 29, 1995

Washington, D.C.

The deposition in the above matter was held in Room 714, O'Neill House Office Building, commencing at 10:10 a.m.



Appearances:

Staff Present for the Banking and Financial Services Committee: Thomas Clark, Senior Counsel.

For Department of Justice:

CHARLES SGRO, ESQ.
U.S. Department of Justice
Tenth Street and Constitution Avenue, N.W.
Washington, D.C. 20530

WHEREUPON,

JOSEPH EDWARD GANGLOFF,

a witness in the above-entitled matter, was called as a witness, and having been first duly sworn or affirmed to tell the truth, the whole truth, and nothing but the truth, was examined and did testify as follows:

EXAMINATION BY MR. CLARK:

Q Can you just state your name for the record?

A Joseph Edward Gangloff.

Q Good morning, Mr. Gangloff. My name's Tom Clark. I'm Senior Counsel to the Committee on Banking and Financial Services. Thank you for coming in today. I should note for the record that Ms. Angela Garcia of the Minority professional staff called me yesterday to say she would not be attending this morning, and that we could proceed without her. As you may know, the committee is investigating the failure and resolution of Madison Guaranty Savings & Loan Association and related matters, including the executive branch's handling of Madison Guaranty. Most of my questions will be related to that area.

I'll have some questions for you, and when I'm done, if he wishes, Mr. Sgro may ask you some questions.

This deposition is not governed by the Federal Rules of Civil Procedure, but objections may be made for the record. If an objection is made, the question will either be

withdrawn, recast, or allowed to stand at the discretion of the questioner. If there is an instruction not to answer a question and the instruction is followed, I will have to determine if the deposition is to proceed or if a recess must be called to obtain the Chairman's instructions, if any. In a spirit of cooperation, however, the committee hopes to avoid reaching that point.

It's not a marathon. If you need to take a break, just say so. I don't think we'll be very long.

If you don't understand a question, just say so. Okay?

A Okay.

Q What year did you graduate from law school?

A 1977.

Q And upon graduation, where did you begin to work?

A I joined the Department of Justice, I did the Honors Program, worked in the Antitrust Division, Special Regulated Industries Section.

Q Okay. Here in Washington?

A That's correct.

Q And have you worked for the Department of Justice continually since then?

A Yes.

Q Okay. After 1977, did there come a time when you moved out of the section you were in?

A Yes, I joined the Public Integrity Section in

January of 1981. I was actually hired at the end of 1980, but started January, 1981.

Q Okay. And was that as a trial attorney?

A That's correct.

Q And approximately how long did you remain in the Public Integrity Section as a trial attorney?

A In 1987, I believe I became the Director of the Conflicts of Interest Crimes Branch.

Q Okay. And that, I take it, was a supervisory role?

A That's correct.

Q Okay. And did there come a time after that when you assumed a different position within the Department?

A I've actually always been in the Public Integrity Section since the time that I started, but I've held a number of positions in the Public Integrity Section, including Acting Chief for about a year at one point, and my present position is Principal Deputy Chief.

Q Okay. And the year that you were Acting Chief for the section was which year?

A I believe it was April -- beginning of April, 1993, to sometime in March, 1994.

Q Okay. When did you first become aware that there was some investigative matter in which the name of either Bill or Hillary Clinton had arisen?

A I don't know.

Q Was there such a time?

A Well, I know today, and I've known in the past, but I don't recall the specific time.

Q Okay. Do you recall attending a meeting in John Keeney's office in the fall of 1993, at which certain allegations concerning Mr. Clinton were discussed?

A Well, I recall at least -- I should say, particularly as Acting Chief, I've had many, many meetings in Mr. Keeney's office. I do recall having a meeting in Mr. Keeney's office which probably relates to your inquiry. I don't know that it dealt with -- well, I know that it did not deal with specific allegations against President Clinton. And there may have been more than one meeting.

But the one that I do recall is one that concerned an investigation which was taking place in which a defendant in the case, Hale, who I'm sure is known to you, had made a proffer or otherwise made it known that in exchange for rather extreme concessions from the government, he could provide certain information that in some way would implicate the President, but it was -- the information was very nonspecific and part of the reason for the meeting was to figure out what the specificity level and the credibility level was.

Q Okay. This particular meeting that you just discussed, who was present?

A Well, the one that I'm thinking of now was one that

involved Jack Keeney, Irv Nathan, at least for part of the meeting, Jerry McDowell, and myself. And I don't recall if there was anyone else present at the time.

Q Okay. And did you take notes of that meeting?

A I don't know.

Q Okay. About how long did the meeting last; do you have any recollection?

A Well, long enough for -- as I recall, Jack had a discussion with me and Jerry McDowell for some period of time, which, you know, could have been 15 minutes -- I don't think it would have been longer than that -- and then I seem to recall that Irv Nathan came and joined us. And then Irv Nathan left after maybe -- I don't know, 5 or 15 minutes. And then our meeting continued for a short time after that.

Q Okay. Who was -- who was the person who first notified you that the meeting would occur, if you remember?

A I don't have a specific recollection, but it probably was either Jack Keeney himself asking me to stop over -- his secretary could have called and said, can you be over here for a meeting?

Or by the same token, you know, he may have called Jerry first, and Jerry McDowell may have called me and said, could I come over. But I would think most usually it would have been either Jack or his secretary.

Q Who was the person who was notifying the others of

this information that you've just discussed about Mr. Hale?

A I don't really understand that question.

Q Well, was this the first -- was this meeting the first time that you were hearing this information that Mr. Hale was looking to supply information concerning Mr. Clinton?

A I don't think so. I think I had some earlier knowledge. I think that the reason for this particular meeting was specific information that Irv Nathan had gotten from a third party with respect to the nature of the information or the fact that the defendant and his lawyer intended to go public with the information or had, in fact, already discussed certain of the information with somebody in the press.

Q Okay. If you think you had earlier information concerning this, what was the earlier information that you had?

A Well, let me say before I keep going on this, that I -- as you may or may not know, I was interviewed by the Independent Counsel's staff with respect to some of the things we're talking about today.

Q Okay. I'm not going to ask you to, you know, tell me what you told them.

A Right. But what I want to do is acknowledge that there is, in fact, a written record which was not only more

contemporaneous to the events, but also was one that was created in a context in which I was shown extensive notes and in which a FBI agent was present and certain additional information was made known to me in a way to jog my memory.

So to the extent that there's a record that may be inconsistent with my recollection today, I want to specifically acknowledge that this record exists, and there are circumstances there which would account for what I would hope to be any minor discrepancies.

Q I recognize that, and I do have a couple of documents to show you. But at first, I'm just trying to see what you can recollect independently of documents.

A Okay. Well, there's not too much reason for me to keep sort of a chronological memory of these things, because my job is very issues oriented, as you are probably aware, with respect to the Public Integrity Section's work.

But at some period of time, I became aware that there was -- an issue had arisen with respect to the Hale case. And the issue was that the subject of the investigation, or the defendant by that point -- I'm not sure whether he had actually been indicted, and the issue was whether to indict him or go to trial on a particular date. I think perhaps he hadn't even actually been indicted yet, and one of the things he wanted to avoid was indictment. And one of the issues that may have come up was whether there was a procedure to end up

with a sealed indictment, whether that would have some usefulness.

But in any event, I do remember there was some period of time when essentially we were collecting information as to, you know, who Hale was, what the charges against him were, what the allegations were. And my very vague recollection is that, at least at the inception, the focus was on whether the allegations that were made had a sufficient degree of specificity and a sufficient indicia of credibility to basically warrant making some arrangement with this defendant. But the -- I remember at the very outset, the demands and concessions that were being sought by the defendant through his attorney were really -- were far out of line with respect to the specificity of the information.

Q Going back to the meeting that was in Mr. Keeney's office, do you recall any discussion of whether the matter should be taken in to the Department itself, here in Washington, taken out of the U.S. Attorney's Office in Little Rock?

A I don't think that that was the focus of that particular meeting. I think that the focus was just that the allegations being made by Hale might become public and there was some -- I think what had happened was the attorney, whose name I don't recall, I think it may have been Coleman, that he had contacted some member of the press. And firstly, that

would have been at odds with his asserted purpose of avoiding public embarrassment to his client. And so that was one thing that was a little bit odd.

The other thing that was odd, as I recall it, is that -- and again, I don't know quite what the timing was here, but Coleman had communicated with the U.S. Attorney's Office, but so far as I recall, had not communicated with Main Justice. And at some point early on, whether I told the assistant who was handling this or I was just part of a meeting where we said, well, we should make it very clear.

I seem to recall there was a letter drafted at some point, but I remember our thrust being to make sure that the defense attorney knew that he had recourse to Washington in terms of if he really had something to give; you know, it didn't make any sense, for example, for him to go to the assistant United States attorney with something that he said that he had that was great, not get what he wanted -- which would have included either a sealed indictment or a favorable deal -- then to go to the press, and at the same time ignore what most people know to be an available avenue, namely coming to Washington.

I think that -- the Criminal Division is, I think, well-known for being quite generous with its time when somebody actually wants an audience. And there was some concern that this be very clearly committed -- or communicated

to the defense attorney. And my general recollection is that there had been some earlier correspondence from the U.S. Attorney's Office to the attorney, which had said something like, we considered this, but we are not interested, or something like that; or it has to be more specific. I don't recall.

But what we were focused on was, we wanted there to be a letter that specifically said, by the way, you know, here's this other avenue -- made it clear that that was it, and made it clear that the reason for concern or the reason for kind of reluctance to become involved in the conversation further was the lack of specificity of any information.

By the way, I do recall one other thing that came up in these discussions was sort of almost an aside in terms of, geez, if this is it, the threshold, then why can't anybody come in and say, oh, well, yeah, I walked my dog down the street and it was against the law, but the President said I could, or the President does it, too, or that kind of a ridiculous extension.

Q Okay. I'm going to show now a series of pages, Bates stamped 007736 through 007767. And I believe that they are consecutively numbered.

A Okay.

Q Do you -- do you recognize the handwriting that appears?

A Yeah, I am looking right now at 007736, which is the -- a photocopy of the front of a composition-style notebook. It's dated, it looks like 6/27 or maybe 6/21/93, has my name printed there; and that is, in fact, very familiar to me in terms of the way I print my name. And as I turn to the next page, -737, I see handwriting that again is consistent with my own, and as I look and see the content, I have some recollection of the content as well.

So I --

Q Okay.

A -- have no question or no reservation that this is my notebook.

Q Okay. 007737, the handwriting on it is at an angle. Is that the way that you recall it being in the original, or do you --

A Yeah.

Q Okay.

A No, I usually write across the page at an angle, and if you actually saw these notebooks, there's a good chance that these notebooks are actually printed on graph paper. Because I happen to like to write on graph paper, and I write at an angle.

Q Okay. Page -7737, that first page, I'm sorry to do this, but I'm going to ask you to read aloud all the information that you wrote down on that page.

A Well, it says -- at the top it says, 9, slash, 20, slash, and then you can't read the year. And then as you come down the page there is the letter delta from the Greek alphabet. It says, equals magistrate. Below that, Fletcher Jackson equals AUSA. Below that, Randy Coleman equals counsel. "Equal," in all cases, is done with a mathematical equal sign.

Q Okay. Now, the delta, does that entry there, does that mean that in any instance where you used the delta sign, it is in place of the word magistrate?

A Not necessarily. It happens that at the law school I attended, it was popularly used that pi was "plaintiff" or government, and D, as delta, stood for "defendant."

Q Okay. So delta equals magistrate does not mean that --

A Well, for these purposes, if it says D equals magistrate, it means the defendant in the case is magistrate, and I see farther on down the page it says delta atty, which would mean delta attorney, which would mean defendant's attorney.

Q Okay, very good. Can you continue, beginning with -- there are two columns, it appears -- the left-hand column?

A Sure. The USAO, dash, handling case. David Hale, dash, dash, under that the word city. Then a section sign,

1001, with an arrow leading to the initials SBA. Then Hale equals, again with a mathematical sign, close ties to GOV, period. Hale runs SBIC, dash, leveraged by SBA, makes loans. SBA audit resulted in FBI referral. FBI search warrant equals charges. Delta counsel equals Randy Coleman. USA equals Paula Casey, paren, acting, slash, to be confirmed, close paren. Little dash into that, no pi, Greek pi experience, meaning no prosecutorial experience.

And next line says, close to Clinton. And then Hale wants IM or MISD charge for info.

Q Okay. Where you wrote there, close ties to gov, G-O-V --

A Right.

Q -- that's short for governor?

A Correct.

Q Okay. And does that refer to any particular person, governor?

A Well, the person I now suppose know to have been -- well, yeah -- yeah, it referred, I thought -- now, this is very difficult, actually, because now I would guess that that is Governor Tucker, but at the time I probably would not have known that.

Q Okay. And then at the bottom, where you wrote, Hale wants, that's short for immunity or misdemeanor charge?

A Correct.

Q Is that correct?
A Right.
Q Okay. Can you read the information in the right-hand column, beginning with what appears to be Hale claims?
A Hale claims 1986 knowledge of crim contact by Clinton, and then I can't make out the next word, S&L, probably says, in S&L or something like that. And then there's a dash, delta atty has exchange or exchanged correspondence, dash, insists -- insist, or insists, on felony plea, dash, agreed to 5(k) if appropriate, dash, Hale willing to make some calls, dash, a word crossed out, and then agreeable to sealed indictment.
Q Okay. Now, the date that appears, 9/20, and the information that appears here, does that indicate to you the year that this information was written down?
A Well, the photocopy doesn't contain it because it seems to be -- have cut it off at the top. But based on the content and the first page of it or the cover of the book, I take it to be 9/20/93.
Q Okay. And does the appearance of the date on that page reflect that that was the day that you wrote this information down?
A That's what I would sus -- that's what I guess. I mean --

Q Is that your normal practice?
A That's my normal practice?
Q Okay.
A I should also tell you, my normal practice with respect to these notes is, they don't have a very long shelf life in the sense that I was -- I don't know who I was talking to here, and we may get to that. But to the extent that I am gathering information, it's for a specific purpose, and that purpose is either to put something generally in my own mind, which once I've done this, is there, or to be able to get back to somebody and say, here's what happened.
So I'm actually quite shocked that I was able to read so much of this, which makes me also think it was probably sometime in the morning.
Q Well, the -- well, withdrawn.
Can you tell, either from looking at this or just from focusing on the event, who was stating this information that appears on this page?
A No, I can't; I can't tell who was stating this information. One of the things is, you know, it may have been a continuation of another conversation that I had had earlier. It could have been -- based on the nature of the information here, it could have been Keeney, could have been McDowell. It could have been a call to Fletcher Jackson, but that seems unlikely because this is -- ordinarily I would have

written at the top the person's phone number if I had called them, or more identifying information. So somebody was obviously giving me some briefing with respect to the general facts at this point.

Q Okay. Do you -- do you recollect whether you had a specific task to undertake at the conclusion of the meeting?

A This is the meeting that involved Irv Nathan?

Q Yeah.

A I don't think so. I don't think so. I think that the main thrust of the meeting was -- I forget whether at that time Irv Nathan told us the source of his information or did not. But basically, as I recall it, one of the things that happened at the meeting was we indicated that there -- I think he did not tell us the source at that time, and he wanted to not tell us; and we basically explained that it was unlikely that he would be able to maintain that confidence consistent with his duties to the Department, that we thought that there just was no way that he could have this kind of information and not tell where it came from.

Q At that point in time had he been working very long for the Department?

A I don't think so. I don't recall specifically, but I don't think so.

Q Okay.

A I mean, the thrust of what he did was, he got

information; he obviously immediately recognized that he should share it with the Criminal Division, but because he had gotten it from a personal contact, he was hopeful that he wouldn't have to disclose that contact. So there was no reluctance to give over the information and, ultimately, no reluctance to, you know, address the issue of whether the confidentiality could remain. Once it became clear that that was something that was important to the Criminal Division, he gave up the information.

Q Okay. I'm not sure that you answered the question that I asked.

A Did I get tasked?

Q Yeah.

A Yeah, that -- that little diversion was to try to help put me in my mind where it was. I don't know whether I had a specific task after that meeting, especially because I don't know when the meeting was. It would have been consistent with leaving the meeting like that, that if I didn't already know this information, I may have been, you know, asked to -- you know, call out there and see what the status was, something along those lines.

Q Okay. Why don't we flip to the next page, and I'm going to ask you to go through the same exercise.

A Okay. Alleg, A-L-L-E-G, relate to Clinton, slash, Tucker.

Q Okay. Is that shorthand for allegations?

A Correct, allegations. And then it says, I can't really read the word, but it's slash, P-I, and the first word begins with F and I would guess that that's fraud, slash, P-I, followed by an arrow, conduct as if IC investigation.

Q Okay. And IC is shorthand, or it's an abbreviation?

A Oh, Independent Counsel.

Q Okay.

A But of course there was no Independent Counsel statute in place at the time, which is why it says as if. And then it says, not take Hale case from USAO, not want to jeopardize this case. Keep in, something, I don't know the word.

Q Possibly focus?

A Oh, that looks like it could be, keep in focus, usability of Hale testimony. And, of course -- let me just -- I'll go through the whole page and then go back.

Q Sure.

A Then an arrow, get USA report from career prosecutor, then there's an arrow. It says, suggest Casey recuse from Hale's allegation. Then it says, paren, possibly from Hale, close paren. Hale has engaged in SBIC -- I don't know what the letters are specifically, but I'm sure it means misrepresentations to SBA.

And then there's an asterisk, says no direct link to '86

claims. Then it says delta probable, colon, loans from SBIC not repaid. Then it looks like it says, required now speculative venture, then a word -- realty probably is the word, but all I can tell you is it has an R and a T-Y in it. Then it says Madison Guaranty.

Q S&L?

A S&L, right, S&I in Little Rock, makes loans to Clinton, slash, Tucker, Whitewater Realty.

Q Okay. You said towards the top, might be, suggests Casey recuse. This is just a little thing. I think it has an A-L there. Is it possibly recusal?

A Oh, yeah, suggest Casey recusal from Hale allegation.

Q Okay.

A And then the thing I was going to make a note on, keep in focus the usability of Hale testimony, was the idea that whatever -- you know, whatever kind of an arrangement was worked out with Hale would be worthless if basically any case that resulted was nondocumentary and relied on his testimony and it appeared that he walked away from, you know, significant criminal exposure just to dump uncorroborated information.

And then the other thing that --

Q And that's an analysis that would apply to any person in a similar circumstance, correct?

A Yes, but again here there's a sensitivity that if you could push him for documents and you didn't get the documents, you know, here it's a particularly sensitive issue, because I mean obviously if there's an allegation against the President, you don't want to have negligently conducted some aspect of the investigation, which later can inure to the benefit of whoever the subject might end up to be.

And then it says, suggests Casey recusal from Hale allegation. And then it makes the distinction there in that parenthetical between the allegation being made by Hale and the actual prosecution of Hale.

Q Yeah.

A That's two separate issues.

Q Okay. Do you recollect why you stated it in that way?

A Well, yeah, because I think it seemed clear that she shouldn't -- maybe not at this early point, but I think so. I think that at a very early point it was clear that she should recuse from the Hale allegations themselves. And the question was, should she recuse from the Hale case as well? And that wasn't so clear.

It also wasn't so clear whether she would have to recuse her whole office or whether just she could recuse and the prosecutor handling the case could stick with it.

Q Okay. Just -- mechanically, could you just briefly

explain what was contemplated as far as how she could recuse herself from the allegations, but not from the prosecution of him?

A Well, I think that was part of the discussion, could that effectively be done? One way would be to say, she's not responsible for following up the leads that come from Hale. She's not responsible for debriefing Hale with respect to those things.

So basically what you've got is what appears on the surface, at least at this time, to be a pretty -- you know, a cookie-cutter prosecution of Hale with not very much being offered, so we don't want to derail the prosecution. And later, in the earlier page, that reference to 5(k) could refer to the sentencing guidelines, 5(k) departure for cooperation.

So from the beginning everyone agreed that -- in fact, the standard way of dealing with defendants is basically to say, well, here's what you can have, you know, you play -- you give us the stuff you say you have, and we will make the court aware of it and it will be used to your benefit and, you know, those kind of things. That's as far as you typically go.

Q Sure.

A And -- but I don't know, you know, these are alternatives in this way. I don't know if this was -- you know, I don't know how much was really going on in terms of analysis at this point or whether it was just, here are the

things. One, you could leave it completely; one, you could separate the allegation again that Hale was making; and you could also treat the case against Hale separately.

But it seems to me that I don't know whether it was a statute problem or the case, I don't even recall whether the case had been indicted or was about to be. I guess it was about to be.

Q By statute problem, what are you referring to?

A Statute of limitations.

Q Okay.

A But there seemed to be some -- there seemed to be some urgency with respect to the inquiries. But as I recall, the other thing here that was going on was -- I don't know whether, again, whether Irv first brought this up or not, but there didn't seem to be a sensitivity on the part of the U.S. Attorney's Office to the issue of recusal. There seemed to be a sensitivity to the fact that somebody was providing information or purporting to have information on the President or associates of the President. But I -- you know, my recollection, when this came in, it was in an advanced enough state at least when I heard it that it was somewhat surprising that it had become so advanced without Criminal Division input.

Q You mean the discussions with the defense attorney?

A Yeah, I mean -- well, that the issue had developed.

I mean, here's somebody in a -- you know, in a U.S. Attorney's Office who's getting information which arguably is information involving the President of the United States, and certainly it is information concerning a sensitive area in terms of geographics and personal connections. And I don't recall that as really having sparked any particular concern with respect to this.

So by the time we got it, you're talking about -- first I heard about it, we've got a situation where I think the defense attorney had for some time been saying, we have this, and the first round had gone back and say, well, put-up-or-shut-up kind of a thing. And that stuff wasn't -- hadn't come to Washington. It still was kind of moving along.

And I think that we knew about the issue before Irv Nathan raised it. I think the thing that he added to it was the fact that there it was a good possibility of it becoming public. But the issue, you know, you would hope that that issue would have been surfaced earlier than at least I knew of it. Maybe somebody in the Department knew of it.

Q Did you actually see any of the correspondence that was going back and forth between the U.S. Attorney's Office and the defense attorney?

A Not at the time it was occurring, as I recall. I think that I saw the one letter, at least the one letter that

had gone back telling them -- telling the defense attorney that there was -- that it was an insufficient basis upon which to give the concessions that he was asking. But I think I saw that in the context of knowing that we wanted to come out, that was, you know, more inviting in terms of making it clear that the person did not -- the thing to avoid obviously in this kind of a situation is the idea that the defendant is getting the cold shoulder for some improper reason. And so for that reason, you make as many avenues available as you possibly can.

And we wanted to be sure that if the person suspected that they weren't getting a fair hearing from the assistant or from the new U.S. attorney, they understood they could come to Washington with their concerns.

Q Okay. Just generally speaking, does the information -- withdrawn.

Can you tell from looking at this page whether this information was coming from the U.S. Attorney's Office in Little Rock or whether it was coming from someone in Main Justice?

A Well, it looks more, as I read the fraud, slash, P-I, conduct as if IC investigation, seems much more that it's Keeney who's providing the information. But, you know, even to the extent of whether this is a meeting or a phone call, I can't tell that from those notes.

Q And just to be clear, I think towards the top of the page underneath, keep in focus usability, I think you said, get USA report, and it looks like there's an O there. Could it possibly be get U.S. Attorney Office report from career prosecutor?

A That's what it is, right, USAO is U.S. Attorney's Office, report from career prosecutor.

Q Okay. You never worked in the Fraud Section; is that correct?

A That's correct.

Q Okay. Were some of these terms somewhat foreign or alien to you, such as SBIC and --

A I hadn't -- yeah, I knew what the SBA was. I think that prior to this, I probably didn't know what the SBIC was.

Q Okay.

A Which explains some of the other notes where I think -- on the previous page, I think, some comment about -- well, I know this was the first that I really understood the relationship between SBIC and SBA and, you know, as it related to this case. It wasn't like I said, oh, I understand that situation.

Q Okay. Why don't you turn to the next page, 00739? And again, I'm going to ask you to go through the same exercise.

A Okay. This handwriting is becoming more familiar

looking, to the extent it's becoming less readable, but it says by, apostrophe, 86 loans unpaid, auditors, W-L-D, would, that's what it means, would have seen loans. Madison loan, or loans, improvident, e.g., it looks like L-R-G loans on undeveloped land. Pressure on Hale to shore up Madison for audit. Clinton called Hale's brother to urge use of SBIC funds. There was a meeting. Jim McDougal, something, of Tucker -- attorney of Tucker, it could be.

Q How about "ally"; is that possible?

A It's possible, but that's --

Q You're not sure?

A It's more subjective than the terms I normally use --

Q Okay.

A -- so I don't know.

Slash, Clinton, then it says Fulbright committee, JM, with an arrow, charged and acquitted, re an S&L matter. I guess that -- well, that's probably a reference, I think, to, if this is true that it happened that Madison -- that McDougal had previously been charged and acquitted with respect to an S&L matter.

Q Okay.

A And then the next arrow says, McDougal, paren, also beneficiary of Madison, called Hale for meeting with McD, or McDougal, office. Hale drives to office -- driven or drives

to office by local sheriff. Clinton, slash, McDougal present. Then it looks like it maybe says, urged funds for S&L from Hale.

Q Okay.

A The "urged" word is not so clear.

Q Okay. Again with respect to everything on that page, can you tell whether that's information that's copying from Little Rock or from someone at Main Justice?

A I think this is -- I think this is a continuation; I think this is coming from Main Justice, although it seems more detailed than the information that Keeney typically would give me. Maybe I was getting it from McDowell, maybe somebody even on our staff had it by this point, but it's clear to me that I'm writing it down and --

Q This is not information you're supplying to the other people, is it?

A No, no.

Q Okay.

A I'm receiving this information. But again, some of the information I may have heard earlier.

My style would not be to say, if somebody started to give me details, to say I know those details already. I would let them tell their story. So this is why this is, you know, somewhat complete. But because it's so complete, I suspect it was very early on to my awareness of the situation.

Q Okay. And on page 007740 --

A Okay. It says, Hale municipal judge, apparent plan, colon, 300,000 SBIC check to Susan McD, dash, 100 percent co-owner, paren, Madison Marketing, close paren.

Q Okay. Now, you said 300,000, but is that a dollar sign in front of the 300,000?

A I believe so.

Q I don't think you said "dollar." Okay.

A Put in account at Madison, dash, two cashier checks, $150,000 each. Then there's a line across the page, then it says memo by SBIC to SBA, re 300,000, with no dollar sign, check was misleading, slash, inaccurate. Revised version was prepared, but not sent, dash, dash. FBI has copy of earlier misleading admission, or submission.

Q Submission?

A Right, submission. Then a line across part of the page. Coleman may allege July seizure by FBI of originals. Coleman claims one doc has Clinton name, then two stars or two asterisks. When Coleman, looks like reviewed docs, it was not there.

Q Possibly received?

A No, I think it was --

Q Reviewed?

A I think that's reviewed, yeah.

Q Okay.

A I think the point was -- well, then there's two stars. Then it says, not necessarily something show criminal activity, but would -- and that could say incriminate. I don't think it says implicate; looks like it says, would incriminate. Not necessarily -- oh, not -- this is all sort of in shorthand kind of written, but it says not necessarily would show criminal activity, slash, but would incriminate Clinton.

Q Okay. Now, on the pages, the three pages, 7738, -39 and this page, -40, they don't bear dates at the top. But is it -- do you have a recollection as to when you were -- when you wrote these notes?

A Well, as I looked at them, actually, and made comments about where I thought the information was coming from, I had assumed that they were consecutive pages from inside the notebook. But I see that you can't tell that actually, since these are photocopies that are extracted. So the answer is, no, I -- yeah, I don't know.

Q Okay.

A In fact, that also means that, you know, the beginning of it could have been from Keeney and the end, maybe I made a follow-up call; but it would seem -- I just don't know, because I don't know whether these are consecutive pages.

Q Okay, okay. If you'd turn to 7741.

A Okay.

Q And I'm going to ask you again to go through the same exercise. I'll note that -- well, why don't you just go ahead?

A Okay. Well, at the top there's some words cut off; it says, not disclosed, then it looks like there's an insertion, but it's not here, to USAO. And that's in -- that phrase is in brackets.

Q Okay.

A But as I say, it's cut off, what it was apparently that wasn't supposed to be disclosed. Anyway, there -- then there's a Roman numeral one, Nathan called USAO, AUSA, Fletcher Jackson, USA Casey. Position equals take plea, get proffer; which would be opposed to let off, get proffer.

Q Okay. Is there a third possibility, get proffer, sign agreement, take plea?

A Yeah, that would be a possibility.

Q Okay. So this note here reflects that this is your understanding --

A Oh, this doesn't necessarily mean that this is chronological. When it says, take plea, get proffer, it doesn't mean, take plea, then get proffer.

Q It does not?

A No, I think this just means that the proffer would be in connection with the plea. I think that's what it means.

Q Okay.

A And this is -- this sounds a little consistent with what I've been saying, but it says, no USA contact with DOJ. Rose Law Firm may have represented Madison. Possibly Hubbell did rep, star, keep -- looks like it says, associate others out.

Oh, I think that that's a reference actually internally to be sure that nothing goes up the associate line, which was consistent with our instructions generally that criminal matters not go through the Associate Attorney General.

Q Okay. And just to be clear, at that point Mr. Hubbell was the Associate Attorney General?

A Yes, that's what I recall. Even if he hadn't been, it's not typical that this stuff goes through the Associate's office. That's usually not the way.

But anyway, next says GMcD, here it stands for Gerald McDowell, arrow, was the urging illegal.

I'll just stop and tell you, this is typical of discussions in the Department of Justice where people will talk about lots of different things and then somebody with some considerable experience will ask a rather insightful question, like suppose Clinton did meet with somebody and suggest that they put money into a bank because there was an audit coming up, et cetera, et cetera. In other words, if all those facts were true, is there anything illegal about it?

So then we have, I think it says, check historical re Clinton allegations raised during election. And then -- then the names written in a column, Hale, McDougal, Whitewater. There's sort of a greater than sign that says nexus and double star.

Q Okay. Then there seems to be some sort of division on the page, or is that just a doodle?

A No, I think that's a division of some sort on the page, because then it says -- it's basically, you see, we've discussed this stuff, we know Casey's position.

By this time, if these things are -- if these pages, at least, are chronologically correct, even if they're not all in here, based on the earlier things in, you know, -741 and before, you know, McDowell is asking the insightful question about, was it illegal?

And then we say, well, okay, what's the connection between Hale, McDougal, Whitewater; that's the central aspect of concern.

And in terms of saying, what else might we need to know, we're saying, well, check the historical stuff because somebody had a recollection that allegations had come in during the election concerning this stuff, so, you know, check that.

And then we get to another one of these very practical kinds of insights, which is reason for indictment urgency,

like why are we rushing if we don't have all the facts? And then there's a slash and it says, do it under seal, seems -- I think it says, seems good idea, although it's a capital S, so it may not be seems. But, do it under seal seems good idea.

What that would basically do -- and again I can only suspect that there were statute of limitations problems, but the idea would have been to actually indict him, put it under seal, then allow him to make the proffer, then check out the information, and then it would always be possible to dismiss the indictment or to redraft it so that it wasn't quite so incriminating for Hale in the sense of his reputation in the community, basically do the normal things that you might do to get information.

Then it says, check with EOUSA. Focus, looks like it says innuendo, but I don't know; then it says, in camera plea, question, whether the plea could be done in camera, so it wouldn't be public. Then it says, check with EOUSA, Executive Office for United States Attorneys; call USA for briefing, which again, if these are chronologically accurate, it would suggest that I had not called Fletcher at this point.

Then it says, slash, FBI, that means check with EOUSA, then also check with the FBI. And then check with Rod, re Ark, which would be Arkansas. Rod would be Rod Rosenstein, who was a lawyer in our office, who's currently on a detail to the Whitewater Independent Counsel, but at this time he had

recently completed a case in Arkansas, an election case, so he had worked with the office, and we wanted to sort of get a little bit of the lay of the land.

Q Okay. Don't turn that page just yet.

A Okay.

Q Does the fact that Mr. Nathan's name appear at the top have any significance?

A Well, I don't know whether this just was at the end of the meeting with Nathan. It has significance, or I probably wouldn't have written it down, but I don't really know what the significance is. It may have just been -- these may have been suggestions made by Irv Nathan.

Oh, that's the other thing, it's not a Roman numeral one, now that I look at it; it's an I, for Irv, Irv Nathan.

Q Okay. Now, you said towards the bottom, focus, and you thought it might be innuendo. Could it also be consensuals?

A Yes, that's exact -- that's what it is, focus is consensuals, namely, earlier on, it had been indicated that he would be willing to make calls, and that's just another way of saying, make consensual calls.

So the idea would be -- the reason you would seal it would be because, once it was known that he was indicted, obviously people would know that he had a specific reason to cooperate with the government. So by doing it in camera or

under seal, you could then do a consensual.

Q Okay. Check with EOUSA, what's --

A That was probably just a matter of see what history they have on this thing. Has anybody written to them? You know, has the defense attorney written in to them? Could be as easy as that kind of a thing.

Q And FBI, is that a reference to the field office or headquarters, or can you tell?

A Probably a reference to -- it could be either one. Yeah, it could be either one. But you can see basically what we're saying here is, what's the issue and let's cover all the bases.

Q Yes. Okay. 7742, it's very brief, it appears.

A Looks like it says, came from, and then, focus on fix.

Q Do you --

A I don't even know if this relates to the same stuff.

Q Okay. It could be something completely different?

A Yeah, it could be. Yeah, I just -- I don't know what that is.

Q Okay. You can skip the next page, but then 7744 --

A Okay. Contact FBI, contact U.S. attorney, att., timing of indictment, seal indictment. Then I have the word Potts, which everybody probably thinks referring to Larry Potts, and it may, but it also may refer to Steve Potts, who

is the Director of the Office of Government Ethics, and I have frequent dealings with that office.

Q Okay. And he spells his name the same way?

A Right.

Q Okay. But it looks -- this is probably Larry Potts, I don't see anything else. And then -- but I don't know whether it means he has information or should be contacted or what.

But anyway, then it says consensuals, FBI, colon, consensuals. Then there's a colon, it says Hale's brother, local sheriff, present governor, and then it says -- I don't know what that says, some other name. But that would be people you consider having involved in consensual calls.

Q Okay.

A And then there's the note, it says Hale to NY Times on Friday. And that means that we learned that Hale had gone to The New York Times on Friday. And then it says FRC filer, Hale '89, McDougal, '87.

Q FRC is short for something?

A Yeah. I'm not -- I'm not -- it's not -- you know, it may be something that I know 90 percent of the time, but now it's not ringing any bells with what it is. It may be something that was a phrase I wasn't particularly familiar with. But it says filer, so I don't know what it is.

Q Is it possibly Federal Records Center?

A I guess it's possible, because that begins with FRC, but the -- I don't know why I would have the word filer there.

Q Could it be a reference to closed investigative files?

A No. It says -- I think it says, filer, so what this is, I don't know if they're required to do some filing with respect to their banking activity or with respect to election contributions or, you know, it could be almost anything. It's clearly a question that's -- I think in the context, it's designed to find another source of information about Hale and McDougal.

Q Okay, all right. And 7745, again it's possible that the top of the page has been cut off.

A Yeah, it looks that way. Then it says W, slash, I, within statute, question mark. And this, of course -- I think that goes not only to the statute of limitations, but initially there was some discussion as to whether the activity was legal as a matter of law, I mean, that kind of stuff, or illegal.

But this says, you know, we could get -- I don't know whether this is choice, it says, one, attorney proffer; two, no-holds-barred debriefing of D, of delta, defendant is what it means. 12 o'clock, JCK, Jack Keeney, calls Paula Casey, out this week. As I recall, she was at a conference for new U.S. attorneys or something like that.

Q Let me ask you this about that particular note. Can you tell whether this means that -- withdrawn.

Can you tell whether you were taking this note at the time indicated, meaning 12 o'clock, or whether you were taking these notes later on?

A No, because it could have been -- it could be that -- you know, it's probably -- I think that this means that I'm in the office with Keeney, it's 12 o'clock, and he has now been suitably briefed; and he's calling Paula Casey, who is out this week. Then it says, Fletcher not in. Then it says 12:14, which is somewhat precise, JCK asks for the first assistant, AUSA, Michael Johnson. So he's gone down the line and I'm guessing that -- I won't bother guessing.

And then it says --

Q Well, this --

A It looks like he gets through, then maybe he put him on a speakerphone at this point, because then it says David Hale, municipal judge, $950,000 SBA scheme, about to be indicted, wants immunity or misdemeanor. USAO said no to deal, slash, proffer scant. D attorney Coleman letter re proffer rejected, that's in quotes, USA, dash, says 5(k) possible, paren, exchange of letters.

Hale spent five hours with New York Times, paren, according to Times, close paren. Casey was going to talk with Moscato, issue re Pres., slash, current governor. Johnson

equals last call matter, equals Pres. matter. I don't know what that is.

Then it's a double line. It says, JCK tells Nathan info re Whitewater meeting, slash, 300,000. Then there's a line, says, Johnson gives source as -- looks like as or is, source is or as Hale, slash, atty to DOJ.

Q From the composition of the notes, is it your belief that this reflects notes that were taken during the conversation with Mr. Johnson?

A Yeah. My guess is that I was -- that this was on a speakerphone and we were saying -- or that Jack was saying, well, what's -- you know, what's going on? And then the paren, exchange of letters, may be a note to myself, like, was there an exchange of letters, because I wouldn't interrupt during the call. Or it may be one that, you know, there was an exchange of letters, sort of highlight it, meaning we want to get the exchange of letters.

Q Okay. Then towards the bottom you have the two parallel lines and underneath, JCK tells Nathan info.

A Yeah, that probably means that the first call with Johnson terminated, and then Jack immediately picked up the phone and told Nathan the info, but I can't tell.

Q Okay.

A I can't tell. But what had happened here was, The New York Times had contacted Johnson, and they had puffed him

with respect to "they already had a lot of information, they were ready to go with this story, here was his opportunity to give his side" kind of a thing. So that was kind of what was, you know, what was pushing that at that time.

Q Okay. Now, there's a reference, you read Johnson, last full matter, Pres. matter.

A Yeah, that may refer to the very early referrals that had come in, or -- I don't remember it specifically, because I frankly don't even know whether I was involved in it when I first came in, but the initial October, before-the-election RTC letters, and it may just mean that Johnson was the guy who was involved in that as well.

Q Okay. Back in September of 1993, do you think you were familiar with that initial referral, even if you hadn't been involved in the processing of it?

A I have some slight recollection. And again, I don't know where this one even comes from, because I've been asked so many questions by this time.

Q Yeah.

A But I have some slight recollection that something came in in the nature of correspondence, which is something that we do, you know, a couple hundred sometimes in a month. And that there was a piece of correspondence concerning RTC and that it either got routed from Public Integrity to Fraud, or Fraud to Public Integrity, or somehow that we had an

awareness of it.

But, you know, I wasn't directly involved in any decision-making as I recall, although for all I know, we sent a response and my initials are on it. I mean, it was that kind of a thing.

Q Okay. Why don't you turn to --

A You know also, at the bottom, excuse me, it doesn't say, Johnson gives source is Hale; it says, Johnson guesses source is Hale, slash, attorney.

Q Okay, all right, thanks for clearing that up.

A Let me make that general caveat, just in case somebody reads this transcript without actually seeing these notes, I'm doing my best effort, but I don't think doctors have much on me in the way of difficult-to-read handwriting.

Q Sure. 7746.

A Okay. All right. JCK -- you know, it could have been, when it says, briefed Nathan, maybe Nathan walked into the room at that point. Because it looks like -- again, I can't tell whether these were really consecutive pages or not, but it does say JCK, colon, one, get detailed proffer from attorney; two, from defendant with no promises; and then it says, MJ -- that's standing for Michael Johnson here -- colon, would accept proffer, slash, 5(k) if substantiated, useless as immunized witness.

Q Okay. Could that be substantial instead of

substantiated?

A 5(k) if substantial, yeah, because that's a requirement, that it has to be substantial.

Q Okay.

A Then JCK says, monitored -- or it says JCK, colon, monitored calls, question mark, in view of Times disclosure. Then it says Hale has given USAO only general assertion. Then JCK, when is indictment planned? Coleman went to New York Times after USA letter as, then it looks like the word apparent, and I can't tell whether it's responsible or responsive.

Q Or just response?

A Response, yeah, after USA letter, as apparent response, right. Then it says, the column next to it, Tuesday, p.m., slash, other fraud cases pending. JCK, colon --

Q Sense of allegations?

A Yeah, sense of allegation against Clinton. Let me also reflect for the record that to the extent that you have made interjections, it's following long pauses where I've tried to contemplate what the letters are. So I appreciate the input.

Q Sure. I'm not trying to influence you.

A Right, and I also -- I just want to make it clear, you're not cutting me off in any way. This is while I'm

sitting here scratching my head.

So it says, sense of allegation against Clinton, slash, per Paula, nothing there. And then there's an arrow; it says, Johnson thinks last fall letter covered this. In other words, he thinks this is the same stuff.

Q Okay. Before we go any further, does the composition of the notes on this page, 7746, indicate that these are notes taken during a conversation, or do they indicate to you that they are a post-conversation summary?

A Well, I don't do post-conversation summaries generally. So I have no suspicion that they're post-conversation. I think what it is, is that I'm sitting there and I am hearing Jack, probably on the speakerphone, could even be one side, but if the speakerphone was working it would be on the speakerphone, and then I'm just basically keeping track of what's going on.

Q Okay. Before we go any further, do you have any recollection of a call to Mr. Hubbell's office occurring immediately after this call with Mr. Johnson?

A You mean -- no, no. I mean I have a -- no. And if the sense of your question is, was I present during such a call, I would be shocked to not see it represented in my notes. But more importantly, there was nothing I read in my notes -- the one thing about keeping the Associate's office out of this.

Q Yeah.

A I can't think of any information that would have been being communicated from Jack, who would be a Deputy Assistant Attorney General, to Hubbell in a matter like this; I mean, even one that said, don't ask about X matter or something. But none of that stuff was occurring, so --

Q Okay.

A I don't have a specific recollection of one. I would be, frankly, quite surprised to learn that there had been.

RPTS WATT

DCMN MAGMER

Q Okay. The next page, 7747, some information has been redacted. I recognize that. But I'd ask you to read the information that does appear on that page.

A Okay. First let me say, I didn't redact anything myself.

Q Sure.

A It could have been the Independent Counsel or it could have been Justice management, for all I know.

Q Understood.

A But I've got no real understanding as to where the lines were drawn.

It says, recuse, question mark. And then it says, any thought to recusal. And then it says, no. And then it says, paren, nomination out of Senate committee. And it says, Paula Casey at Federal Practice Seminar, San Antonio, Texas, (210)227-4392. So that's where she was.

Q Okay. The next page I can decipher, I think, the information that hasn't been redacted. And it's because other information has been redacted, I'm not sure that we can really make a sense of what does appear. So --

A Well, I can make some sense. I mean, if you want me to, just for a second --

What I see here is the circled numbers: 1, 2, 3, 4, 5,

6.

And then it says, in brackets, with a star, Casey will think about it. I would guess that this was actually a proposal of a specific course of action or specific points that had been raised. And since, again, if these pages are chronological and sort of close in actual occurrence in the notebook to what they are here, it looks like they got the telephone number for Paula Casey and then maybe Jack got to talk to her. So --

Q Okay.

A But it looks to me like there was something of substance here, I would definitely say.

Q Yeah. And then what does appear is, Casey will think about it, correct?

A Right, right.

Q Okay. Do you have a recollection of being present during a conversation with Ms. Casey that day?

A I think so. I mean I'm -- not a specific recollection. I know what the issue was with Paula Casey and with her office. And whether we were into really having made a determination on the appropriateness of recusal or not I don't recall at this particular time.

But one of the things that comes up frequently, especially with someone who my notes indicate had no prosecutorial experience, a brand-new United States attorney,

still going through the nomination process or just having completed it, the threshold that we have for considering when a recusal is appropriate is one that makes a lot of sense from, you know, here in Washington with some experience in terms of appearance of conflict issues but which sometimes strikes those in the field as not the right one.

And the distinction is this: As somebody in the field -- and I recall this coming up in conversations with Paula Casey, either my own or I was aware of them or something -- basically, is, you know, well, if I recuse because of X's involvement, I must be saying there's something in the case bad about X.

Our thing is, once X's name is raised, it's time to recuse on an appearance standard. Because if you later conclude that there is something, you will inevitably have taken steps that in some way shape the future of the investigation, even if it's deciding who to go to first or second and who to alert to certain things. And you would have gotten documents in your hands.

If you decide not to go, you'll always have the cloud that there was a reason not to go. And if you start down the thing, the kind of analysis we would give it is when do you stop? You can't stop the day before you indict the person. That's clearly not it.

So the more you roll that back, the more you find that,

ultimately, your decision not to recuse is going to have a more incriminating suggestion for the reason for your recusal than if you just do that to start with.

So that's sort of the -- you know, and kind of explaining to people not only that that makes a lot of sense but that it's quite common and that it's no reflection on the U.S. Attorney involved or the assistants or the individuals whose names comes up. It's just through experience this turned out to be the best way to avoid the experience of any conflict.

Q And I take it that because of the nature of the crimes that your section prosecutes, you had substantial experience with recusal issues prior to September of 1993?

A Yes, yes.

Q Okay. Why don't you turn to 7749? And, again, please read aloud.

A Okay. It says, conference call, McD, MMCD, slash, JCK, slash, IM. It says, conference call.

Q Okay, to the top of that -- I didn't mean to cut you off, but there's some information to the top.

A Yeah, it says 9/20, 9, slash, 20. I can't see a year. That may have been cut off. And then in the right-hand corner looks like it says, call -- call Martin or Martins. I don't know what that is. But because of the position on the page, though, I would suggest that may have been some extraneous thing that I just thought about or came up.

Q Yes, okay.

A Then it says, 5:30. It says, Irv wants leads to Bureau. Then it says, per DAG via Irv Nathan. And Phil Heymann was the Deputy Attorney General referred to there. Says, let them proceed on Hale. We should pursue leads. Focus equals Madison Loan. Then it says, paper trail. It says, pursue things, W, slash, O, meaning without specific cooperation of Hale.

The point -- and this is just a sample of some of the things. The point here was that we should do all the things that we can do that don't involve any getting any information from Hale. We should not stand by and let Hale slow up the process in any way by any negotiations or discussions with him. We should go out and, as it says here, we should pursue all the leads that we have. And this -- it was basically one of as creative as you can be. Anything you can think of doing without the specific cooperation of Hale, do.

Q Okay. Let them proceed. Who does them --

A I think that means allow the U.S. Attorney's Office to continue to proceed with respect to Hale. Which at this point proceed means, you know, he's indicted, he's going to be indicted, he isn't giving any information. So it's more like don't change trial dates, don't get calendars changed, just keep on going.

Q Okay. Now, you didn't put your own initials on the

page to indicate that you were present for tne conference call, but --

A I was, yeah.

Q Okay.

A I was. And then at the end it says, call Johnson, re Coleman knows department. And then I can't say whether it's in it. I guess it does say in it. And, of course, that's that emphasis that I talked about before when we wanted Coleman to absolutely know that he had an avenue other than the U.S. Attorney's Office.

Q Okay. I think there was a small bit of information in a second column that you didn't --

A Oh, it says, what is the crime, question mark. In stat, question mark. So it's the first question is, what's the crime? Are the elements of any Federal crime present here? And the next issue was if there is a Federal crime, is it within the statute of limitations? Because this was very old information.

Q Okay. We can skip some of these pages. And if you'd go to 7763, 64 and 65.

A Okay.

Q These are -- these are pages that contain printed information. I take it they're not notes from your notebook.

A No. These appear to be newspaper articles, photocopies of newspaper articles, maybe even magazine

articles. But this -- if they were in my notebook, it's probable that I attended a meeting and was handed these, and my practice would have been just to stick them in the notebook in the pages that they related to for background.

Q Okay. And for the record, this does -- it indicates it's an article concerning the allegations that Mr. Hale was making regarding Madison Guaranty, Mr. Clinton and Mr. Tucker?

A Right. One of them, on the 7763, judge expects to be indicted in SBA loan, this is the article.

Q Okay.

A Oh, I guess that's -- and it looks like the rest is just a continuation of that article, the other two pages, from the Arkansas Democrat Gazette.

Q Okay. If you go to 7766, please. It's very brief.

A Okay. It says, Little Rock, 9, slash, 29. I don't know what the first name is there. Then it says JAF, which stands for Joan Farrington, who is in my office. Although Joanne Harris -- I think it's Joan Farrington, yeah. And then it says GAC, which is George Alan Carver. It says --

Q How about Wade and Dorch?

A Wade and Dorch, Dorch is a FBI agent, was a supervisor over there.

Oh, and the first name there before JF is GMcD, Gerald McDowell, Gerald McDowell. So it's Gerald McDowell, Joan Farrington, George Alan Carver, Wade, which is what it looks

like, and Dorch. And Wade would also be FBI.

Q Okay. Does this indicate -- well, does this have any significance to you, the way it's written?

A Well, I -- the primary significance is I remember really only one meeting that involved Carver and McDowell. And I don't know what the timing is. At some point -- and Joan Farrington specializes in Independent Counsel matters. That's one thing to note. And there are notes in here reflecting our input into the Independent Counsel legislation that was pending during this time.

Whether this is it or not, I don't know, but there was a meeting at which we basically sat down on very short notice in the Public Integrity Section's conference room; and Wade and Dorch, I don't recall, but at least Joan Farrington, Carver, McDowell were, I guess, present, although even with Joanne -- the meeting that it calls to mind is one in which we attempted to define a scope of jurisdiction for a Special Counsel, as distinct from an Independent Counsel. And that's what this calls to mind.

Q Okay. Was -- was the meeting to discuss the scope, was that in anticipation that the matter out in Little Rock was going to have to be removed from the U.S. Attorney's Office?

A I don't know whether that meeting, that decision -- well, I don't know.

Chronologically, at one point it was determined that the Fraud Section would go and do the Hale case. And they sent three attorneys, headed by a former United States Attorney, Jim Mackay. And there was some discussion as to whether Public Integrity should be involved, but we don't have as many people as Fraud, for one thing. We were very short staffed at the time, so we were very happy not to have gone.

And as you probably know, but it's worth saying, Jerry McDowell had been chief of the Fraud Section for about 12 years up until March of 1992. So he was very familiar with --

Mr. Sgro. he was the chief of the Public Integrity.

BY MR. CLARK:

Q You said chief of the Fraud Section.

A Oh, I'm sorry. He was chief of the Public Integrity Section.

So he had experience in Independent Counsel, experience in Public Integrity work generally, and at the same time he was in charge of the section that had the greatest expertise in the Department with respect to criminal banking laws. And Allen Carver was their banking expert. So at some point they -- it was determined that they would actually go and do the Hale case.

Now, with respect to the other part of it, the pursuit of the allegations, I don't know when this -- when it actually arose that it should go -- it wasn't required to go to an

Independent Counsel, obviously, because there was no Independent Counsel statute. And, more than that, there was no credible allegation made against any covered person even had the act been in effect as it was written prior to this time or as it subsequently was rewritten.

But in terms of discretionary matters, the Attorney General asked that we draft up language that would define a scope of jurisdiction so that she could appoint a statutory Special Counsel, a regulatory Special Counsel. And so that was in here someplace, but I don't have much recollection other than we were all in a room, and I remember it was short notice, and we sat around trying to draft it.

Q Okay. That page we were just looking at appeared to bear a date of September 29th.

A Yeah, that seems really soon, but, you know -- but I don't know. I -- I'll take this as an opportunity to point out that this seems like a big matter now, and then there was some significance, but in terms of what the Public Integrity Section does, this would be a time when the Travelgate case was there, the Door murder case was there, the Packwood case was there.

You saw a note in here, Rocky Flats. That was a case we were referred by a Federal judge because grand jurors had gone on the courthouse steps and made statements about the proceedings in the grand jury because they were unhappy with

what was going on.

So this is very -- it's hard to say typical, but it is -- it's kind of typical stuff. It's not like your day is this thing. This is one thing that happens in a day, and then you go on to the other things. So, as I say, I'm much more issue oriented than the dates.

Q Okay. Was it -- did you agree at the time with the decision that the Fraud Section should handle it, up until such time as they thought that there should be some input from Public Integrity?

A Yeah, well, I am not sure -- well, I think the arrangement we really had was they would -- and when we say it, again, I'm not really clear about the allegations by Hale and the allegations against Hale. But, you know, I had worked for Jerry for 12 years or so, having joined the section shortly after he did, Public Integrity Section, and I knew that, you know, he was certainly competent to do it, and I also knew that it fell short of the real Public Integrity kind of reason for being involved and that it was, at heart, at this point, a case that involved some very arcane aspects of banking and SBIC and SBA law.

And I also knew, I forget how this emerged, but one of the relevant statutes differed from most Federal criminal statutes in that it had a 10-year statute of limitations. And that was one with which the Fraud Section had expertise. So I

had no doubt that, you know, if it became appropriate for us to be involved, you know, Jerry would call us in and share information.

Q Okay. Did you become aware at some point that there were some specific allegations concerning the 1984 Clinton gubernatorial campaign, the fund?

A I don't know if that was -- first of all, I'm not aware of ever being aware of specific allegations of criminality with respect to that. And I don't, frankly, remember -- I mean, our initial focus had to do with the $300,000 and the two checks and the fact that Clinton was alleged to have been at these meetings. And I don't think we were -- I don't think it was really a focus on where the money ultimately was going, et cetera. It was more -- it was sort of sort of more basic than that.

Q Okay. But later on at some point?

A I don't recall. You know, I don't recall.

Q Okay. Let me show you a series of pages Bates stamped 007731 through and including 7735. And my first question would be whether you recognize the photocopy.

A These appear to be pages from -- from my 1993 government issued 8-1/2 by 11 calendar.

Q Okay. And there's writing that appears on a couple of the pages. Do you recognize the handwriting?

A It appears to be mine, except with respect to the

word redacted which appears quite frequently. I did not write that; and, as with the other documents, I didn't make any redactions.

Q Okay. Turn to 7733, please, the date of October 28th. You have something written on the lines 7:30, 7:45. Do you see that?

A Yeah, it says JCK.

Q Okay. Do you know what significance that has, if any?

A Probably was a reminder to get -- I don't think it was a meeting at that time. It probably was a reminder to get back to Jack on something.

Q Okay. Were you involved in the preparation of any urgent reports concerning the Hale investigation?

A I don't -- I can't -- it doesn't come to my mind what urgent report I would have been involved with, although I could have been, early on. But, again, by now I guess you've heard a lot about urgent reports, but again, some sections generate three in a month. My section sometimes generates three in a day.

Q Okay. Let me show you 002204 and 2205. It's an urgent report dated October 28th, 1993, from Mr. Keeney to Ms. Reno and Mr. Heymann. Did you see that document at about the time that it was prepared?

A I don't recall having seen this at the time. There

would be another document that showed a routing slip.

This, it looks like it was generated from the Fraud Section. Normal routing on matters would not have an urgent report go through Public Integrity that was originated in Fraud. And to the extent that these are designed -- you know, generally by the time an urgent goes, Jack already knows the information, basically. This is sort of information that should go to the Attorney General because something is about to happen or it should just generally be within her radar, and this is a way of communicating that.

So there would be no particular reason, you know, why I would get this. I wouldn't argue if somebody said that McDowell sent me an FYI copy of it or that I saw it, but there would be no requirement that I would see it for it to move and no expectation that I would see it.

Q Okay. You didn't participate in the preparation of it?

A I don't recall having participated in the preparation of this.

Q Okay. Between the meeting on September 20th and October 28th, had you been regularly receiving information concerning the Hale investigation, whether through E-mails or memoranda or --

A Well, I don't know. I mean Jerry may have copied me on E-mail communications. I may have seen stuff. But to the

extent that something didn't require me to do anything, you know, as you can imagine from the other people you've talked to, we get stacks and stacks of paper flow through the offices, and for me, you know, I couldn't recognize a large number of urgents that I've actually signed off on, let alone things I may have seen because they're prepared by my staff.

Q Yeah.

A So I would think that Jerry may have routinely copied me on E-mail stuff, but Jerry would not be giving me instructions to do something.

Jack would. Jack does not communicate by E-mail ordinarily. I don't remember ever having gotten an E-mail from Mr. Keeney saying to do something.

I remember, you know, phone calls. And once the three fraud attorneys were involved, and once it was clear that Public Integrity didn't need to get involved right then, it really assumed very markedly a back-seat position for us. Because, frankly, it was quite a relief because we were having some really -- real difficulty solving problems at that time.

So to the extent that Jerry was stepping in and supervising, taking care of that part of it, I could have seen it. Maybe I did. Maybe I didn't. But I'm not in a position to second-guess Jerry McDowell, mostly because I haven't found any things that I do better than he does in the first place. So, you know, it's not my job and not my inclination.

Q Okay. The -- if you look back at 7733, in the column for Saturday, October 30th, you've written some information. And I'd ask you to read that allowed.

A Yeah, let me say, when I write stuff on the weekend entries, it typically is a continuation of something that came up with respect to something on a weekday, but I just used that as a general overflow.

Q Okay. Does -- before you proceed, does the fact that it appears in the column for Saturday indicate that that was the day that you received the information?

A No, no. I'm sure that I wrote the information on the day that I received it, but I'm just as sure that that was not on Saturday, October 30th. And I see some arrows coming out from Friday, October 29th, where some things are redacted.

And Jane Erickson, whose name is here, is an FBI agent. And now this is actually reminding me. I was involved in some debriefing or briefing of Jane Erickson, I think with Jerry. I think she was the first agent to -- and I had worked with her in the past and know her to be a really good agent.

Q Yes.

A And 324-5682 is a telephone number here, and 324 is the exchange for the FBI. So I would guess it was a call over there or maybe she was just telling us her number. The point is, Jane was assigned to go out and gather together

information or review with the Bureau what they had or something like that. So in terms of what it says here, under Friday, October 29, it says, after the name redacted, it says, re RTC referral to, paren, Irv Nathan.

Q Okay. Is that a re -- R-E -- before the RTC?

A Yes, yes.

Q Okay.

A Which is, you know, just means concerning.

Q Yeah.

A And then there's an arrow. Then -- it's hard to read it anyway, with the redactions it's even more so, but it says, particularly because I -- I assume they actually relate to this case if they were made by the IC, and probably have something to do with something totally different if they were redacted by the Department. But I don't have much of a guess on it. But Jane Erickson, looks like it says, 9 --

Q Last week?

A Oh, 9 last week, 1 list, slash, Clinton, slash, Whitewater. Then it says, something Clinton -- I have a vague recollection what this was. The RTC had sent referrals, and it was finding out what was actually in them and being sure we knew either the number of them or the number of total allegations.

Then it says, no referral, re crim or knowledge. I think what that refers to is -- and that's linked by an arrow coming

from Whitewater.

And then afterwards, dash, with McDougal in October, '92. I think what this is referring to is what I believe to be the case at the time, namely that there had been no referral concerning criminal activity on Clinton's part, nor had there been any referral indicating knowledge on the part of Clinton of criminal activity.

Q Okay. Underneath or right above Sunday, October 31st, there is a couple of words I think that we didn't --

A Right beneath that?

Q Right above it. See the bracketed --

A Oh, okay, it says McD, and then it says conference room. So maybe we had this meeting in a conference room. I don't know.

Q No, I was speaking of right above 31, October 31, there's two bracketed lines.

A Oh, okay. It says -- looks like the second one says, can't fund something.

Q How about one mentions can't fund?

A Yeah, that looks like it is -- one mentions can't fund. And that would be referring to one of those letters. And then the side of the page is cut off, but it says something about subject, and then some partial letters. I can't --

Q Okay. Now, if you turn to the next page, 7734, see

under November 3rd?

A Yeah.

Q You have apparently circled 1:30 and 1:45, dash, AG meeting?

A Yes.

Q Can you tell me what that refers to, that entry?

A No, because -- because -- it looks like it says conference room, paren. This may have been -- this conference room is used by the Assistant Attorney General. I've never seen the Attorney General in this particular conference room.

Q 2208?

A Right. If that's the actual number for --

Q Okay. Now, there are about 8 million Assistant Attorney Generals.

A For Criminal Division.

Q Okay. So that would be Ms. Harris?

A Right.

Q Or --

A If it was -- if she was there then. I don't recall that part of it so well.

Q Okay.

A I seem to think she might not have been here then, but I just don't recall. But, anyway, the fact that it says 1:30, 1:45, AG meeting, it may have meant that they were basically gathering all information because there was going to

be an AG meeting and somebody else was going to attend it but needed to be briefed on it. I just don't know.

Q Okay. Let me show you some more photocopied pages out of a composition book, 007728 and 007729. There are some additional pages, but those are really the two that --

A Okay. Yeah, this is a composition book. On the cover it says 11, slash, 2, slash, 93. It appears also to be one of my books, and I recognize the handwriting inside again, with the exception of the stuff that says redacted and not responsive, those kinds of things.

Q Okay, okay, very good. On page 7729, there's some information that appears. And I'd just ask if you could read that aloud.

A This says, looks like it says 11/3, AG meet with section chiefs. The Attorney General has periodic meetings with section chiefs. Then it says 2:30, Casey, slash, Heymann, slash, Harris. It looks like it says, probably, slash, Scotto, slash, Nathan, slash, Urgetson, slash, JCK, slash, McDowell.

Q Okay. Do you recollect attending a meeting with Ms. Casey to discuss the situation with the Hale prosecution?

A Yes.

Q Okay. You've listed a number of people here. Do you know, either from looking at this or independently, whether all these people who you've listed attended that

meeting?

A Well, I actually have a current recollection of Casey, Heymann, Moscato, Nathan, Jack Keeney, McDowell --

Q You're not sure about --

A -- and myself.

Q -- Harris or --

A Yeah, there's no reason to suspect they weren't there, given the way my notes are written. But in terms of my recollection of it -- the other people I can pretty much tell you what seats they were sitting in.

Q Okay. Is -- is the way the note's written indicative of the fact that it was written contemporaneously? In other words, at the time the meeting took place?

A Yeah, I'm sure it was.

Q Okay. Going back to your calendar, using the calendar and this page, was there any meeting that preceded the meeting that Ms. Casey attended at which the people from the Department discussed the talking points?

A Well, the only thing I see that gives some -- it says AG meet with section chiefs on this composition page, under 11/3, and it may be that the issue came up -- I think the Attorney General is well-known for creating assignments and asking for information at the section chiefs' meetings. So it may very well be that at the meeting for the section chiefs she made her interest in this known.

But the fact that Casey was at this thing later -- I mean, Casey doesn't just drop in from nowhere, so I am sure it was scheduled in advance. The fact that it says 1:30, 1:45, AG meeting, that could have even been a reference to the fact that there was an AG meeting at that time, and this was scheduled to go right after that.

So it was one of those things where it says, you know, be there at 1:45, but we don't know what time we're going to exactly start this meeting. It will start as soon as she's done meeting with the other people.

Q At the meeting with Ms. Casey, was there one person who acted as the primary spokesperson for the Department?

A Well, the person in charge of the meeting was Phil Heymann. And his style is essentially to ask questions and develop not only information but sometimes reach a consensus with respect to the nature of the question.

So if I -- I don't think I characterized it so much in -- I think the meeting had a purpose to it, and one of those purposes was, you know, not to make Ms. Casey feel uncomfortable in any way. So it was not like there was a lead person to, you know, to juxtapose themselves to her.

Moscato was there in a supportive role and did a considerable amount of talking, mostly from the standpoint of the United States attorneys, because he was with the Executive Office of United States Attorney. So his role was sort of to

be her advocate and I think, to some extent, guide her through the process.

Irv Nathan was Phil Heymann's chief assistant, had some background information on this, also happens to be quite skilled at asking appropriate questions, and so he served more to provide information than as simply a facilitator.

But as I recall it, the general thrust of the meeting was just the idea of essentially explaining to Paula Casey what the ramifications were if she decided to keep the case or decided to recuse from the case and how it would play.

We said, well, what about if this happens? What about if that happens? And this goes back to my previous comments that she, as I recall it, was very much starting from a mind that said if I recuse because X is involved, then I must be saying something bad about X. And we basically explained that that was not the case now and that recusals were quite common in circumstances that came anywhere near to this, et cetera.

So it was not to tell her to do anything. I think it was largely one of educating her and simply explaining what the situation was.

I don't recall any differences of opinion among the career people, other than Moscato, who basically served to echo her concerns, whatever they were. However they developed or evolved, that was essentially what his function was, to give her a certified friend at the meeting. But it was, you

know, it was quite cordial.

But I think that the people, at least from the Criminal Division -- Jack, myself and McDowell -- we had a good -- you know, we all agreed that recusal was warranted. In fact, it wasn't even a close issue.

So it's one of those things where you go to a meeting that's going to take a long time to basically explain a process that seems second nature to you when you've been here, you know, doing this kind of work.

Q Okay. So it's fair to say that some people at least from the Department were trying to get across a particular view or opinion, being that --

A Yeah.

Q -- recusal really was appropriate?

A Yeah. Well, it was.

Q Yeah.

A You know what I mean?

Q And Ms. Casey -- Ms. Casey was -- I mean, did she speak at some length?

A Well, intermittently. I mean, she didn't want to appear to be a wimp, and she didn't want to appear to be incriminating someone simply by recusing. So it was largely just a matter of explaining, you know, when these things happen.

And, you know, there was some concern with if she recused

would -- you know, would the press come and say either she got taken off the case and that would somehow hurt her reputation or that the President must be involved, et cetera. And it was like, yeah, well, it's to avoid all of those problems that, ordinarily, a U.S. attorney says, I'm out of this. And it's not reflecting on anybody, because it's certifiably at an early enough level that there's really no stakes in terms of outcome.

Q Yeah, I mean, it's a tough situation, any way you come down on it. Did she mention at all the concern on her part for the career people in her office?

A I don't think that that was the focus. I think that -- I mean, she has a good reputation and she's, you know, a very hard-working attorney, and she was new to a very important position, and I think, you know, quite understandably so, she didn't want to seem like a wimp. You know, she didn't want to seem like she was backing away from making hard decisions.

And what we really stressed was it wasn't the substance of the decisions that was the issue. Nobody -- you know, nobody doubted in these kinds of situations the ability of the U.S. Attorney to make unbiased decisions and the hard-working aspect of a prosecutor. But the reality of it is that these are situations that appearances really are important, as important, more important than the actual stuff. Because you

could come to any just result, but if the appearance is off, you know, you've only gotten halfway there.

Q Yeah.

A And, by the way, there was no significant disagreement expressed with respect to how the case should proceed in terms of investigation or how the case should proceed in terms of any of those kinds of things. It was just the issue of what's the appearance of the U.S. Attorney sticking with it.

Q Okay. Subsequent to the meeting with Ms. Casey, did you have any personal involvement in the matter before it was assumed by Special Counsel Fiske?

A I don't know. It may have been at that point that this meeting occurred where we, you know, wrote up the scope of the jurisdiction. In terms of directing the investigation, I don't recall having had any. In terms of getting information that may have been copied to me, you know, there may have been some.

But, you know, this was -- you know, this was being closely monitored by not only McDowell but also Keeney, both of whom I've worked with virtually my entire career in the Department of Justice and neither of whom has ever done anything that suggested to me that they're not a hundred percent qualified, capable, dedicated to receive -- you know, to achieve the right results.

Mr. Clark. Okay. Thanks very much. I don't have anything further.

The Witness. Okay, thanks.

Mr. Clark. Thanks for coming in.

[Whereupon, at 12 o'clock noon, the deposition was adjourned.]

GANGLOFF EXHIBIT 2, ERRATA, WAS NOT PROVIDED IN TIME FOR PUBLICATION

DEPOSITION OF DONNA O'DOWD
IN RE: S. RES. 120

FRIDAY, OCTOBER 13, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of DONNA O'DOWD, called for examination pursuant to notice of deposition, at 10:25 a.m. in Room 124 of the Dirksen Senate Office Building before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, JR., ESQ.
Majority Deputy Special Counsel
GLENN F. IVEY, ESQ.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

PAUL FISHMAN, ESQ.
U.S. Department of Justice
10th Street and Constitution Avenue, NW
Room 4114
Washington, DC 20530
On behalf of the Deponent.

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EXHIBITS

Donna O'Dowd	
DEPOSITION NUMBER	IDENTIFIED
O'Dowd Exhibit 1	9, 1388

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PROCEEDINGS

Whereupon,

DONNA O'DOWD

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Could you please state your name for the record.

A Donna O'Dowd.

Q Your present business address?

A Main Justice building, room 6316, 10th and Pennsylvania Avenue, Northwest.

Q Which office in the Department of Justice is that?

A Justice management division, departmental ethics office.

Q What is the phone number there?

A 514-8196.

Q What is your present position there?

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A Ethics program specialist.

Q How long have you been employed in that position?

A Two weeks.

Q And prior to being employed in that position, where were you employed?

A Executive Office for U.S. Attorneys.

Q How long were you employed at the Executive Office for U.S. Attorneys?

A Approximately five years, or six.

Q Which dates?

A November '88 until September '95, so actually seven.

Q And what were your duties at the Executive Office for U.S. Attorneys?

A I came on board as a secretary in '88, and then around '91 or '92 I became the ethics program manager.

Q So during the '91 or '92, you said?

A Yes.

Q Were you the ethics program manager in September of '92?

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A Yes, I believe so.
Q And throughout the balance of 1992 and 1993?
A Right.
MR. GICALE: Off the record for a second.
(Discussion off the record.)
BY MR. GICALE:
Q Just to clarify something, earlier you stated your name for the record. You've recently been married; correct?
A Right.
Q Your maiden name is?
A Henneman.
Q Now, you are aware of the committee's document request to the Department of Justice dated August 25, 1995?
A No.
Q Are you aware of a request for documents from the Department of Justice with respect to Madison Guaranty and Whitewater?
A I was aware of a request back a year or two ago, but not in '95.

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Q Well, pursuant to the prior request -- do you know whose request that was?
A I was told through the executive office to produce documents back, I guess it was a couple of years ago, a year or so ago. I'm not aware of any documents -- I mean, I haven't been asked to produce any documents since that time.
Q Do you know whether that was pursuant to a Senate or House request?
A I think it was, yes.
Q Senate request?
A I'm not sure.
MR. GICALE: Off the record.
MR. FISHMAN: Yes.
(Discussion off the record.)
BY MR. GICALE:
Q Pursuant to requests from your supervisors at the Department of Justice, have you searched for records with respect to this matter?
A Yes.
Q And you've turned them over to the Department of Justice?

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A Yes.
MR. FISHMAN: Off the record.
MR. GICALE: Sure.
(Discussion off the record.)
BY MR. GICALE:
Q Have you turned all records that you could find with respect to this matter, Madison Guaranty, Whitewater, that you've been requested to produce and look for?
A Yes, I've produced them all.
Q Now, did you speak to anyone other than counsel prior to this deposition this morning with respect to what you'd be testifying to?
A No.
Q Now, this deposition is being conducted pursuant to Senate Resolution 120. Resolution establishes a special committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority and other related matters.

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Section (1)(b)(2)(c) of Senate Resolution 120 authorizes investigation, public hearings into whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation. This will be the focus of today's deposition.
You were requested to testify on October 5, 1995. Your deposition is in advance of a public hearing, which may occur in late October or November of this year. You may be required to testify at that time. We will ask you a series of questions. You will be testifying under oath. If you don't understand a question, let us know and we will rephrase it. If you need a break, let us know.
The stenographer will prepare a record of questions and answers. The deposition will be treated as committee confidential. That is to say that the substance of this is to be kept confidential and you are not to discuss this with anyone outside this room, this deposition, until commencement of the hearings.

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Prior to the hearings you will receive a letter from the committee telling you that you may come to the Senate to review the transcript of your deposition and make note of any corrections of transcription on an errata sheet.

If you are called to testify at public hearing you will be permitted to have a copy of your deposition transcript four days in advance of your testimony. You may be represented by counsel.

Objections to the form of the questions will be noted for the record. Counsel may object on grounds of privilege or relevance. The committee chairman may rule on objections where the witness refuses to answer a question.

(O'Dowd Exhibit 1 identified.)

BY MR. GICALE:

Q Now, Ms. O'Dowd, you previously testified at deposition on July 20, 1995 before the Committee on Banking and Financial Services, U.S. House of Representatives, in the matter of Madison Guaranty Savings and Loan; is that correct?

A Yes.

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Q And it's my understanding and I'm going to show you what's marked as Exhibit Number 1 that you had an opportunity to review a transcript of that deposition?

A Yes.

Q You were under oath, that you had an opportunity to review it and that you submitted an errata sheet in the form of a letter dated August 16, 1995 to Tom Clark, senior counsel and oversight investigations under Committee on Banking and Financial Services, U.S. House of Representatives; is that correct?

A Yes.

Q And I'm showing you what's marked for identification as Exhibit Number 1. Is this a true and accurate reflection of your testimony and the errata sheet on that date?

MR. FISHMAN: Well, let me show you this. For the record, the document you're handing Mrs. O'Dowd is 129 pages. She has had an opportunity to review the deposition transcript. I don't think we want to take the time now for her to check through

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this 129-page transcript to make sure that it's the same one, but on the representation that it is the one that we provided to the committee, then --

BY MR. GICALE:

Q This is a transcript provided by the Department of Justice to the committee. Based on that representation, are you saying that this is a true and accurate representation of your testimony at that time?

A Yes, it is.

Q Now, at that deposition, you were asked a number of questions with respect to a number of contacts you had with an individual by the name of Jean Lewis from the RTC, and you testified to a sequence -- a number of these conversations. Strike that. Not sequence, a number of these conversations.

In particular, I would like to focus on one that you were asked about, and that is a June 8, 1993 conversation. And I'm going to show you what's marked for identification as Bates number 006636. This is an E-mail from Jean Lewis dated Tuesday, June

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8, I believe, 1993, regarding subject, Madison Guaranty.

In the first paragraph it says that "It seems that Madison referral number C 0004 has reappeared on her desk," and she's referring in the prior sentence to you, Donna Henneman. And it goes on to say "Audrey Word was successful in locating the referral within the fraud section of the criminal division and determined that the individual assigned to the referral 'didn't want to deal with it,' so she sent the referral and all pertinent information back to Donna Henneman for further disposition."

Now, first of all, this individual, Audrey Word, is that the person you contacted, was that her name?

A Yes.

Q Secondly, did Audrey Word say that she found it within the fraud section and the referral -- person assigned to the referral didn't want to deal with it?

A I don't recall the -- I recall the conversation, but I don't recall if she said that the

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person didn't want to deal with it.
Q Well, what do you remember about the conversation with Audrey Word, and how was it that you came to talk to Audrey Word about this?
A I called the executive secretariat to find out where the recusal was. They tracked all the correspondence in the Attorney General, Deputy Attorney General's office. When I contacted them, they told me that it was in the fraud section of the criminal division, and I called that office and Audrey Word answered the phone. And I told her --
Q Now, when was this?
A I have no idea.
Q The first person you talked to was Audrey Word?
A Yes.
Q In the fraud section?
A Yes. She told me she would look into it and give me a call back. She called me back and told me she had located it and that I could come get a copy of it, and that's all I remember.
Q Now, the fraud section is located in a

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different building than your own, correct, Department of Justice?
A I think part of the fraud section is in the main Justice.
Q Well, when you went to get this from her, was this in the same building, do you recall?
A I'm not sure if I got a copy from executive -- I didn't do it personally. I assume I sent the secretary to do it. Either we got a copy from the executive secretariat, which is located in the building, or may have sent her directly to Audrey Word's office. I'm not sure whether she was located in the building or not.
Q Okay. So do you know where Audrey Word obtained this from or whose files she obtained it from?
A No. From that division. She found it in her office. I don't know where she got it from or who.
Q And when we're talking about the document that she found, I'm going to show you what's marked for identification as Bates number 0070399, is this

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the memorandum you're talking about? And this is a memorandum -- or is this one of the documents that you saw?

MR. IVEY: Would you describe it?

MR. GICALE: I'm about to.

BY MR. GICALE:

Q This is a memorandum from John Keeney to Douglas Frazier dated March 19, 1993. It's regarding -- it says subject, recusal by U.S. Attorney office, district of Arkansas on Resolution Trust Corporation referral. Is this the document you received or one of the documents you received from Audrey Word that day?

A It's one of the documents. This was the cover sheet, and then it had -- attached it had -- I believe it was an internal memo from one of the attorneys in the division on this subject.

Q I'm going to show you what's marked for identification as Bates number 007041. Is this the internal document? And this is a memorandum from Mark J. MacDougall, M-a-c-D-o-u-g-a-l-l, to Gerald McDowell. It's dated February 23, 1993 regarding the

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Resolution Trust Corporation, criminal referral number C 0004 dated August 31, 1992. James B. M-c-D-o-u-g-a-l, Susan McDougal and Lisa Anspaugh, A-n-s-p-a-u-g-h.

Was that the attachment to this memo that she gave you?

A Yes.

Q Were there any other documents attached that you recall?

A I think the package was thicker than this, but I don't -- the only thing I ever read was the top sheet. I never read anything else that was attached. I think it was all -- in the documents that we turned over, they were all clipped together. I don't know if you have that.

Q Well, I'm going to show you what's marked for identification as Bates number 007049, a letter dated January 27, 1993, addressed to you, Donna Henneman, regarding RTC referral C 0004 from Charles Banks.

Was that letter attached to it, do you recall?

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A I don't recall.
Q And then I'm going to show you what's marked for identification as Bates number 006671, which is a memorandum dated February 9, 1993 from Anthony Moscato through Douglas Frazier to Stuart Gerson regarding the subject recusal by the United States Attorney's Office for the eastern district of Arkansas on a Resolution Trust Corporation referral.
Was that memo attached, do you recall?
A I don't recall.
Q In any event, you do recall the first two documents that you identified as being in the package of documents?
A Yes, I do.
Q And somebody returned them to your office; you did not receive them yourself from Audrey Word?
A No, not personally.
Q And what did you do with them when you received them?
A I called Jean Lewis and told her that I had found the package and advised her what this cover memo had said, that the criminal division found no

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identifiable basis for the recusal of the U.S. Attorney.
Q You basically read this word for word to her over the phone?
A Basically, yes.
Q And then what happened? Did there come a point -- she obviously said something -- did she say something to you about that and as a result of that did you talk to Douglas Frazier about this?
A I believe that's what happened. I told her that I would have to check further because I don't know if it had went back to the U.S. Attorney's Office. This didn't really give me a decision, so I believe I talked to either Debra Westbrook or Doug Frazier to find out what the final decision was on the matter. And then I think this was sent to Doug. I remember talking to Doug -- or Debra talking to Doug and saying that he hadn't seen this, so we sent him a copy of this.
Q Where did you send it to?
A I believe he was back in the department at that time. Could have been in the U.S. Attorney's

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Office in Florida. I'm not sure; I don't remember.
MR. IVEY: You guys are saying "this," back and forth. Which exhibit are you talking about?
BY MR. GICALE:
Q I'm sorry. You're talking about Bates number 007039 and 002041?
MR. FISHMAN: 7041.
BY MR. GICALE:
Q I'm sorry, I'm reading upside down. 7041. These are the two documents you sent back to Doug Frazier; is that correct?
A Along with whatever else was attached.
Q Did you have a discussion with him about it?
A I didn't. I believe Debra Westbrook did. I just remember doing a little short note on the top saying per our conversation, attached are the documents, and sending it back to Doug for Debra.
Q And what is the next thing you remember happening with respect to this, the document that you sent to Doug Frazier, or the documents?
A After it was sent back to Doug?

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Q Yes.
A I wasn't involved in it any longer. I believe -- it was sent -- well, I know it was sent back to the U.S. Attorney's Office for a decision on whether they were going to prosecute or decline the case, and I ended up getting a letter from the U.S. Attorney where they had declined the case that she had sent to Jean Lewis because that's what we were trying to do in the first place.
Q What were you trying to do in the first place?
A Find out where the case was being declined or prosecuted by the U.S. Attorney's Office.
Q So the next time you remember any contact with this was when you had a phone call or phone calls from Jean Lewis with respect to the declination of this?
A Well, I talked to -- we sent this -- Debra sent this back up to Doug, and it was sent back to the U.S. Attorney's Office for a decision. I don't know by whom or how it got there. I talked to and Debra also talked to the U.S. Attorney, Paula Casey,

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and asked her if she had received it and if she could take a look at it and please send the letter to Jean Lewis letting her know whether it was being declined or whether it was going to be prosecuted, because Jean Lewis had been calling our office, wanting to know what they were going to do with it.

Paula said she would review it and send a letter to Jean. I'm sure I had conversations with Jean in between this. I don't remember all of them. Paula reviewed it, sent the letter to Jean, cc'd our office and Jean got the letter that she had been wanting.

Q Now, your prior testimony at the deposition which has been marked Exhibit Number 1 and the Jean Lewis E-mail messages indicate that her first contacts with you appear to be sometime in May of 1993.

MR. FISHMAN: I think we should make clear for the record that when you say E-mail messages from Jean Lewis, those are, as I understand it, internal RTC E-mails that were not sent to Ms. Henneman contemporaneously at all. I'm trying to make the

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distinction so the record is clear on that.

MR. GICALE: I understand.

BY MR. GICALE:

Q That's correct, but it's my understanding that you have reviewed -- at some point in time, you have reviewed her E-mail messages, is that correct, somebody gave those to you to review?

A Yes.

Q I'm going to show you what's marked for identification as Bates number MC 0819. It's an E-mail message from Jean Lewis to Richard Iorio dated Wednesday, May 19, 1993 wherein Jean Lewis said she had "contacted Ms. Henneman for background information on what I was looking for." That's in the third paragraph of this E-mail message, third line of that paragraph.

Do you see that?

A Yes.

Q Would that be the first time she called you on this matter?

A Yes.

Q Now, do you remember talking to Doug

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Frazier about this referral prior to Jean Lewis calling you on this matter?
A No, I didn't talk to him prior to this.
Q Now, you do recall receiving the initial referral in October of 1992; is that correct?
A Yes.
Q And you assisted in preparing the paperwork on that referral that ultimately -- the sensitive report that ultimately went up to the Attorney General; is that correct?
A Yes.
Q And some other people listed on that sensitive report?
A Yes.
Q But between the time that you received that initial referral in October of 1992 -- and by the way, that was at the time that Mr. McWhorter was the director of the OUSA; is that correct?
A Correct.
Q Between the time you received that referral in May of 1993, did you talk to Mr. Frazier at all about the status -- strike that.

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Subsequent to receiving the referrals in October 1992, there was a letter that came in which you earlier identified as Bates number 007049 and 007050, letter dated January 27, 1993. It was a letter from Mr. Banks regarding recusal; correct?
A Correct.
Q And as a result of that letter, a memorandum was prepared by Mr. Moscato, Bates number 006671, which was sent on to Mr. Frazier; is that correct?
A I didn't prepare this memorandum, but it was prepared based on this letter.
Q Based on this letter -- and it was sent up through Mr. Frazier to Mr. Gerson; is that correct?
A Correct.
Q Now, between the time that that was sent up to Mr. Frazier and the time that you received the phone call from Jean Lewis in May of 1993, did you discuss with Mr. Frazier or anyone else the status of this request for recusal?
A No, I had nothing to do with the recusal. I was not involved in it in any way.

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Q Who in your office would have been involved in that aspect of it?
A Robert Marcovici.
Q So it would have been up to Robert Marcovici to track the status of this recusal matter; correct?
A Yes.
Q Now, does he also work for Debra Westbrook?
A Debra is no longer with the executive office. He will still with the executive office, but Debra is with the Marshal Service.
Q But at that time did he work for Debra as well?
A Yes, at that time he did.
Q Now, did you or anyone in your office have contacts with Webster Hubbell regarding criminal referral C 0004?
A I did not.
Q Do you know anyone in your office who did?
A I don't know of anyone that did.
Q Are you aware of any discussions between Paula Casey and Webster Hubbell relating to criminal

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referral C 0004?
A No, I'm not aware of any.
Q Are you aware of any discussions between Webster Hubbell and the White House regarding criminal referral C 0004?
A No.
Q Did you or anyone in your office have any contacts with any present or former employee of the White House relating to criminal referral C 0004?
A No.
Q Now, there came a point in time in October of 1993 when you received summaries of a second set of referrals; is that correct?
A I don't believe that was -- what was the date, October -- what did you say?
Q September or October of 1993.
A Oh, okay, yes. I thought you said '92, I'm sorry. I believe that's it. I'm not sure. I don't remember the dates. I remember receiving the summaries.
Q You had some conversations with Jean Lewis with respect to whether or not you should receive

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copies of referrals; is that correct?
A Yes.
Q And it's my understanding you've testified that, and her E-mails indicate that initially she asked you whether or not you wanted copies of the referrals; you indicated that you did. Then you later talked to Debra Westbrook and told her that summaries of those would be fine?
A Correct.
Q You didn't need the entire referral?
A Correct.
Q So that you ultimately received copies of this second set of referrals?
A Yes.
Q Did you or anyone in your office have any contacts with any present or former employee of the White House relating to the second set of criminal referrals?
A No.
Q What did you do with that second set of criminal referrals, or at least the summaries of those referrals, once you received them?

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A Put them with all the other documents that I had accumulated during the course of talking with Jean and filed them.
Q Did you also send copies to Paula Casey or did you discuss them with Paula Casey?
A I discussed them with Paula, but I was under the assumption that she was receiving the investigative report from Jean Lewis so she didn't need copies of the summaries. I had advised Paula that they were being sent.
Q Do you have any personal knowledge of contacts between any member of the department and the White House regarding criminal referral C 0004?
A No.
Q Or the second set of referrals?
A No.
Q Do you have any knowledge of any improper handling within the Department of Justice of any criminal referral relating to Madison Guaranty Savings and Loan?
A No.
Q Do you have any knowledge of information

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relating to RTC criminal referrals being shared with individuals other than employees of the Department of Justice, the FBI or the RTC?

A No.

Q Do you have any other relevant information?

A No.

MR. FISHMAN: Well, let me object to the form of that question. What Ms. Henneman might or might not deem relevant is not necessarily consistent with what the committee might or might not deem relevant.

MR. GICALE: I'll withdraw that, strike the question.

I have nothing further.

MR. IVEY: Short break?

(Recess.)

EXAMINATION

BY MR. IVEY:

Q Good morning. I'm Glenn Ivey. I'm with the minority staff. Almost said majority out of force of habit. Times have changed.

I want to ask you a few questions. We'll

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go back through the deposition a little bit. I'll try not to duplicate questions that you've been asked previously, but there will be some overlap so that I can flesh out answers that you've given previously. Okay?

A Okay.

Q I just want to start off, first of all, this is Exhibit 6584 and 6585. It's a chronology typewritten starting with October 7, 1992.

Did you prepare that?

A Yes, I did.

Q When did you prepare it, roughly?

A Probably the end of '93. It was in regard to the requests that I received to turn over all the documents and to make a chronology. Late '93, early '94.

Q What was the goal of the chronology? What were you trying to do when you put it together?

A Just document all of our conversations that we've had with individuals concerning the referral.

Q I wanted to ask you a couple of questions about the referral, or the chronology that you put

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together there.
Let me show you this packet of information. I'm afraid the first page doesn't have a Bates stamp number. The page that comes after it, it looks like 6694. It's kind of cut off. And you can see that the second page is a letter from Richard Iorio of the RTC to Charles Banks dated September 1, 1992. The page in front of that looks to be a fax cover sheet from the U.S. Attorney's office, Matt Dodson to Donna Henneman, 10-6-92. Let me hand that to you.
Is that something that you received?
A Yes.
Q Now, did that generate this entry here, the urgent report that's listed on your chronology dated 10-7-92?
A Yes, it did.
Q Do you know why the U.S. Attorney's Office sent this fax to you on October 6, 1992?
A They wanted us to prepare an urgent report for the Attorney General.
Q And you've testified what an urgent report

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is, I believe, in your previous deposition?
A Yes.
Q Is there any particular reason the fax wasn't included? Did you feel it was included substantively under the 10-7-92 listing on the chronology?
A Yes.
Q Let me ask you about this exhibit. This is a memorandum which you were questioned about earlier. It's from Mark MacDougall to Gerald McDowell, dated February 23, 1993 regarding the criminal referral C 0004. I have different Bates stamp numbers than earlier. This is 6678 through 6682.
Do you recognize that at all?
A Yes.
Q When did you see that first?
A It was attached to the memo that Audrey Word sent down to me that she had found left in the criminal division. I never read this memo. I just remember a memo being attached from an attorney in the office.

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MR. GICALE: Just for record purposes, the memo you're talking about is the earlier Bates number 007039; is that correct?

THE WITNESS: Correct.

BY MR. IVEY:

Q And this memorandum, the MacDougall memorandum, is that subsumed in one of your entries on your chronology as well?

A I don't believe it is, because that is not -- we put together a chronology of only what our office -- the conversations our office had and the documents our office prepared. That was prepared by the criminal division so we would not have included that in our chronology.

Q Okay. Now, on your chronology, you've got under the 3-19-93 entry but in a separate paragraph -- I'll read it. It says "Spoke with Jean Lewis, senior criminal investigator, RTC, on several occasions (between May 1993 and September 1992) concerning referrals to USAO, stated she sent a referral to USAO and has not received its decision as to whether she would prosecute or decline. Wanted

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decision. Advised was in DAG's office for decision."

DAG's, Deputy Attorney General?

A Correct.

Q I take it from this entry you started receiving telephone calls from Jean Lewis in May of 1993?

A Yes.

Q About how many times did she call you?

A According to her E-mails, because I think she documented just about all the calls, it was probably about 10 times.

Q About 10 times?

A Right.

Q Is that somewhat unusual that you get calls from investigators of that sort?

A Yes, it is.

Q Have you ever gotten calls from other investigators?

A No.

Q Why did she call you?

A I think she -- she was calling other

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components in the department trying to track this down, and it happened -- the phone call happened to filter its way down to our office because she was talking about sending documents to the U.S. Attorney's Office, so somebody decided to transfer it to the executive office and made its way to the legal counsel's office and I happened to answer the phone.

Q Do you know if she called the U.S. Attorney's Office before she called you?

A I don't recall if she did or not.

Q Would you have told her to call the U.S. Attorney's Office and check there first?

A Well, she said she had sent it to the U.S. Attorney's Office and hadn't received a response, so I wouldn't have told her to call there.

Q Now, when she first called, what was it she asked you to do?

A To find out whether the referral was going to be acted upon or whether it was going to be declined.

Q Now, I think you testified a moment ago that there was a man, Robert Marcovici?

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A Yes.

Q Did you say that he had responsibility for the referral?

A No, he handled the recusal, not the referral, which came after.

Q So the recusal and the referral were treated as separate entities or how --

A Well, the referral came in as an urgent report, so we prepared the report. And after we prepare it, our office is done with it. It's just sort of an informational memo to the Attorney General and Deputy Attorney General.

After that is when the U.S. Attorney's Office sent in a request to recuse theirselves from the investigation. That was assigned to Robert. No one was really assigned to the referral. It was just prepare an urgent report and file it. That's how we handle all urgent reports.

Q Okay. So with respect to the urgent report, then, technically the referral was not in your possession, you just got information from the U.S. Attorney's Office saying that they had the

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referral?
A They sent a copy of the referral, so I did have the referral in my hand. Normally we ask them to summarize what they're sending, but instead of summarizing they sent the entire referral, so I did have a copy of the referral, but that wasn't being sent to us for any action except to prepare the urgent report.
Q I guess what I'm trying to figure out is technically who had possession of the referral at that point?
A I did.
MR. GICALE: At what point in time?
MR. FISHMAN: Object to form. Let me ask you to clarify. When you say possession, do you mean responsibility for dealing with it or the physical document?
MR. IVEY: Responsibility for dealing with it. I guess copies could be made endlessly.
MR. GICALE: If she knows.
MR. FISHMAN: Right.
THE WITNESS: I had the responsibility for

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preparing the urgent report. And then it goes up to the director's office and we just get our copy back once it's signed and it gets filed. That's all the responsibility I had, was to prepare the urgent report.
BY MR. IVEY:
Q Let me clarify. If there's something you don't know, obviously I'm not asking you to make things up, just to clarify Lou's point, and if there's a point where you speculate about something, tell us that in advance, just "I'm not sure, but et cetera, et cetera," and that's fine too.
A Okay.
Q And after you sent the urgent report to the Attorney General, Deputy Attorney General and an Associate Attorney General, that's all for your office; is that right?
A Our office doesn't actually send it. We just prepare it and it would go up to the director's office, who would sign off on it, and that office would take care of getting it distributed to all the people on the list.

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Q Now, with respect to the recusal issue, that came to your office via a letter to you from Mr. Banks on January -- the letter is dated January 27 but you received it on February 1?
A Correct.
MR. FISHMAN: Off the record for one second.
(Discussion off the record.)
BY MR. IVEY:
Q Let me show you this letter, I've got Bates stamp 6686 and 6687. You've got it there?
A Yes.
Q So this is the letter we're talking about that brought the recusal issue to your office?
A Yes.
Q And what did you do with this after you received it?
A I gave it to Debra Westbrook.
Q Do you know what she did with it?
A Gave it to Robert Marcovici to handle.
Q Do you know what happened to it after that?
A I assume -- the memo was prepared that went

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to the Attorney General on the recusal.
MR. GICALE: Now you're referring to --
MR. IVEY: This is the Moscato memo.
MR. GICALE: Bates 006671.
BY MR. IVEY:
Q Dated February 9, 1993.
A Correct. Robert prepared this memorandum and it went to the Attorney General.
Q So he drafted that for Mr. Moscato's signature?
A Correct.
Q And it went to the Attorney General through Doug Frazier?
A Right.
Q In the Deputy Attorney General's Office?
A Yes.
Q And do you know what happened with the recusal issue after it got -- after this memo went out from Mr. Moscato?
A No.
Q And that's not something you tried to track down for Ms. Lewis?

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A That's what I was trying to track down, whether -- what happened with the referral, which turned into where the -- that the recusal was in the criminal division for a decision.
Q When did you pick the trail back up again on the recusal issue?
A When Jean Lewis called and was asking where -- what was the decision of the U.S. Attorney's Office is when I tried to locate it. I knew that a recusal had been done, I had read the letter. I didn't handle recusals at the time, they were handled by the attorneys in the office, so it was given to Robert, so I remember it coming in and I know that there was a recusal prepared, so I knew that it was somewhere upstairs when Jean Lewis called, and I remember doing the urgent report. That's when I started calling in and trying to track it down for her.
Q What efforts did you go through to track this down for Ms. Lewis?
A I made many, many phone calls to the Deputy Attorney General's Office, I called criminal

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division, I called the executive secretariat, I talked with Doug Frazier, who was the U.S. Attorney in Florida, Debra Westbrook. I went through a lot to try to track it down.
Q Is it typically your responsibility to track these types of issues down?
A No, it wasn't. I just happened to answer the phone and told her I would help her. I didn't think it was going to turn into, you know, such a task.
Q Or depositions and all that.
A You're right, correct, yeah.
Q Did there come a point when you thought maybe you'd done enough for her and you should tell her to just wait for a decision?
A The thought crossed my mind, but I didn't do it.
Q Now, let's see, your entry here under chronology says "10-93, spoke with Jean Lewis, RTC advised matter was sent back" -- I've only got one so we'll have to share.
A I know what it says.

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Q You told her that this had been sent back to the U.S. Attorney's Office for decision?
A Correct.
Q What was her reaction to that, if you can recall?
A I don't know if there was a reaction. I just told her that it was being sent back and that she should be getting a response shortly.
Q Did she ever express any frustration?
A Yes.
Q What did she say?
A She was concerned that it was -- that no one was handling it and that it was just being brushed under the carpet, so to speak.
Q Did she ask you why things might have been delayed?
A She asked me if it was normal for it to take a long time to make a decision, and I explained to her that it was during a change of administration, there wasn't that many people upstairs in the Attorney General or Deputy Attorney General's Office and that it wasn't unusual for things to take a while

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under those circumstances.
Q What was her reaction to that?
A I don't recall if she had a reaction. I don't know.
Q Now, was this about the same time where she asked -- the conversation about sending copies of the 1993 referrals came up?
A The additional referrals?
Q Right.
A Yes, that's when she advised me that she was sending more and was afraid they were going to receive the same treatment as the earlier referral.
Q Now, by "earlier treatment," what did she mean? What did you understand her to mean?
A That it wasn't being given any attention from -- no one would make a decision.
Q Now, at this point were there people in the Attorney General's offices and Deputy Attorney General's offices? Had it sort of staffed up by then?
A I don't know. I don't know when all the new people started coming in.

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Q And when she said that -- she expressed her concern about it receiving the same treatment, what was your reaction?
A I told her that she could send us copies of the referrals that she was sending to the U.S. Attorney's Office and if she had any problems, to give me a call and we would contact the new U.S. Attorney, Paula Casey.
Q Do you know if she ever -- had she contacted Paula Casey or Paula Casey's office at that point?
A Jean Lewis?
Q Yes.
A I don't know if she talked with the office.
Q Do you know if the first referral that she had sent had been declined by this point, October 1993?
A I think that's when it had just been sent back to Paula Casey and she needed time to review it and prepare a letter. It was around the same time that Paula would be -- yeah, the letter -- on 10-27, Jean Lewis received a letter from the U.S. Attorney

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Paula Casey saying that they were declining prosecution, so it was around -- it was within the same month.
Q And what was the point of sending the nine referrals to you? I mean --
A Why did I ask for them?
Q Yeah. What was the logic of that?
A She was concerned so we were trying to ease her mind and to get this over with, so I told her if it would make her feel better she could send them to me and if she had any problems, I would contact the U.S. Attorney.
Q But your office didn't have any role in making --
A No. We don't normally -- we would never normally receive referrals. We were just trying to help Jean Lewis.
Q And you wouldn't take referrals normally because your office doesn't have any responsibility for determining prosecuting merit of referrals?
A Correct.
Q Did she stop calling after that point?

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A Yes. She called me one other time after that.
Q What was --
A My name was in the newspapers and she had saw my name in the newspaper and she apparently said that I was the ethics program manager for the department and she thought I lost my job and she called to apologize for causing me any trouble.
Q Did you lose your job?
A No, nothing that -- no. I don't know. I guess it was a misprint or something.
Q What paper was it in, do you recall?
A It was in The Wall Street Journal, Washington Post.
Q Let me ask you a question. This is document 6675, dated June 8, 1993, from Debra Westbrook to Douglas Frazier and it's got a lot of handwriting all over it. Do you recognize any of the handwriting?
A Yes, I recognize all of it.
Q Okay. Well, let's do this by quadrants, then. In the lower left corner, the handwriting sort

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of written at an angle, whose handwriting is that?
A That's mine.
Q What does it say?
A "Per Doug, 6-23, sent back to district for decision. Crim. suggested declination."
Q What is that referring to?
A My conversation with Doug Frazier.
Q What were you talking about? What was the conversation about?
A Trying to find out where the document was located, and he said that it was sent back to the U.S. Attorney's Office for a decision.
Q Do you recall if he said when it was sent back?
A No, I don't recall.
Q Is there a process for sending referral, recusal issues back to U.S. Attorney's Offices?
A In the past our office would -- or the executive office would notify the U.S. Attorney's Office of the decision that the Deputy Attorney General's Office made and whether they should be recused or should not. I don't know if it was

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handled -- if they did it by phone or they may have faxed a copy of the decision memo or -- I don't think they would have prepared another letter, but they were notified.

Q So that was in the past?

A In the past, yes.

Q Do you know if that was done in this case?

A I don't know.

Q Who would have done it in this case?

A Well, if a decision was made, it would have come back, it should have come back to our office and then we would have notified the U.S. Attorney's Office. That's how it normally worked.

Q So normally -- let me back up. The recusal issue is determined in the Deputy Attorney General's Office; is that right?

A Correct.

Q And he sometimes -- the Deputy Attorney General's Office sometimes consults with the criminal division for substantive purposes?

A Correct.

Q But eventually it all comes back to the

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Deputy Attorney General's Office for that final determination with respect to recusal?

A Correct.

Q And if I understand what you just said a moment ago, it would then come back to the executive -- the EOUSA to notify the U.S. Attorney's Office typically?

A Right, correct.

Q But you're not sure if that happened in this case?

A Correct.

Q And you had -- it sounds like Doug Frazier was about the last person left in the Deputy Attorney General's Office?

A He was one of the last --

Q The sole survivors?

A Yeah, there weren't many.

Q And he's someone that you knew and worked with?

A Yes, he used to be part of the executive office.

Q But there was no contact between you two

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about this determination up until this notation on this letter?
A Correct.
Q And by "this letter," I'm referring to Exhibit 6675, the June 8 memo, I'm sorry, from Debra Westbrook to Douglas Frazier.
A Correct.
MR. FISHMAN: For the record, the notation is June 23, I think she testified to.
MR. IVEY: Right. In fact, it's written on here, June 23.
THE WITNESS: Can I say something?
BY MR. IVEY:
Q Certainly.
A I had a couple of conversations with Doug around that time, so I may have had one before that, but it was all in reference to tracking down the referral.
Q Do you recall anything about those conversations?
A I recall at least two. I talked to him and asked him if he knew where it was and he said that it

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had been -- at first I think he said he wasn't sure and that's when I called the executive secretariat and tracked it down that way. And then he said that it was sent back for a decision, it was sent back to the U.S. Attorney's Office for a decision from criminal.
Q So that would have been roughly during the time you were getting -- sort of in the middle of the time you were getting the phone calls from Jean Lewis?
A Right around 6-23, I would say. I don't think the phone calls were that far apart.
Q Do you know if there's any other mechanism within the department for notifying the U.S. Attorney's Offices that a decision has been made about recusal by the Deputy Attorney General's Office?
A No. They have always been notified through the executive office that I'm aware of.
MR. GICALE: Off the record.
(Discussion off the record.)
BY MR. IVEY:

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Q You mentioned news reports where your name popped up. Do you recall about the time when those articles were appearing in the paper?
A I have no idea when that happened.
Q Do you recall any conversation within your office based on stories that were appearing in the newspaper relevant to the recusal?
A I mean, people in the office talked about me making -- my name making the newspaper and stuff. I mean, Debra's name was also in a lot of the articles, but we didn't have any substantive conversations about it, no.
Q Did there ever come a time where you asked -- other than the conversations you just talked about, what had happened with the recusal, if it had been sent down to the U.S. Attorney's Office or not?
MR. GICALE: Objection as to form. Asked who?
THE WITNESS: That's what I was going to say. Asked who?
BY MR. IVEY:
Q Doug Frazier.

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A Did I ask Doug Frazier about the referral?
Q If the recusal -- if the U.S. Attorney's Office had been notified about the recusal.
A No, I did not.
Q You talked with Paula Casey on several occasions, I guess?
A Yes.
Q And that would have been -- were they all roughly about the same time?
A Yes.
Q And about what time was that?
A October of '93.
Q Did this issue ever come up with her about when the recusal had been sent back or referral had been sent back to the U.S. Attorney's Office? Did she ever ask about that?
A She had received the referral -- or was advised that it was on its way back.
MR. GICALE: Just so the record reflects this, the witness is referring, to refresh her recollection, to Bates numbered document 006584, which is the chronology that she prepared. Is that

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correct?
THE WITNESS: Correct.
MR. GICALE: You're using this to refresh your recollection, I assume?
THE WITNESS: Yes.
MR. IVEY: She already said yes to that.
THE WITNESS: Paula was advised that it had been sent back to her office, and we told her of the problems that we had had with Jean Lewis. She said that she would personally review the referral when she received it and notify Jean of her decision.
BY MR. IVEY:
Q Did you ever talk to Richard Pence at all?
A No.
Q Did Jean Lewis relay the request for the letter of declination, or I guess acceptance of the recusal --
MR. FISHMAN: Referral.
BY MR. IVEY:
Q I'm sorry, referral yes, I'm sorry. Did she relay that request through you to Paula Casey?
A She didn't relay the request through me.

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We requested it of Paula. I don't know if she called Paula and asked her separate from our request, but I mean, that was the request from the beginning when I first started having conversations with Jean, so we were just trying to finally get this thing wrapped up.
Q Was your call to Paula Casey or your conversation with Paula Casey about that prompted by the calls from Jean Lewis?
A Yes.
Q Now, with respect to letters of declination or -- well, let me phrase it this way. Can you recall situations where you received telephone calls from investigators or investigative agencies requesting some sort of action by a U.S. Attorney's Office?
A No.
Q Did Paula Casey ever discuss with you problems that her office was having with respect to receiving documents from Jean Lewis's office?
A She discussed some problems that the office had experienced with the RTC in the past under the

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previous U.S. Attorney, but not with Jean Lewis in particular.
Q What did she say about that, do you recall?
A That there was some tension between U.S. Attorney's Office and the RTC, that in the past the RTC had refused to turn over certain documents to the office in connection with cases. There was just a general dislike between the two offices.
Q That predated Paula Casey?
A Correct.
Q Did you ever get an understanding of what the source of that dislike was?
A No.
Q Do you think it had any role in the actions that were taken by that office with respect to the RTC in Kansas City?
MR. GICALE: I object to the form of the question. I mean, are you asking about the -- the decisionmaking of the office itself? I mean, she's not in that office. I don't know how she can testify to that.
MR. IVEY: Well, if she doesn't know, she

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can say she doesn't know.
THE WITNESS: I don't know how that started or if that's what you're asking or if it had any role in not getting Jean Lewis an answer as quickly as she wanted.
MR. IVEY: Off the record.
(Discussion off the record.)
BY MR. IVEY:
Q I never finished asking you about the writing on this page, 6675 is the exhibit number.
MR. FISHMAN: Since there are multiple copies it's the June 8 memorandum to Douglas Frazier from Debra Westbrook.
BY MR. IVEY:
Q Whose handwriting is this that starts "Doug -- please"?
A "Brief me on background." Dave Margolis.
Q David Margolis. What was his role in all of this?
A I don't know.
Q And this down in the corner?
A I don't know what that -- who wrote that?

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Oh, it says received, 6-9-93. I assume that that's a secretary.

Q So in lieu of using a stamp?

A Yes, they wrote it in hand.

Q Wrote that notation in the corner?

A Yeah.

Q Did Paula Casey discuss recusal matters with you in those phone calls?

A No, she discussed them with Debra Westbrook.

Q What did she discuss with you?

A We just discussed the fact that Jean had been calling our office and wanted an answer, could she please get one to her.

Q That was the substance of the three phone calls?

A There was two or three.

Q And the first call would have been --

A The first call, we were asking her to get the letter of declination or acceptance to her, and then I think I called her back and told her that Jean Lewis was sending more referrals to her and that

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could she please keep an eye out for them.

Q And again, that was a phone call prompted by --

A Just my -- I mean, I did it on my own initiative.

MR. IVEY: I'm done.

EXAMINATION

BY MR. GICALE:

Q Just a few questions. You stated that it was unusual to receive phone calls like this from someone, an RTC investigator, for instance. Now, what are -- what is the function of the Executive Office for U.S. Attorneys? What is their purpose?

A To service the U.S. Attorney's Offices.

Q And from time to time, are you aware of the fact that there are disputes and perhaps inquiries from various investigative agencies, FBI, DEA, Customs, that these agencies may have with respect to either resources or cases with the various U.S. Attorney's Offices across the country? Have you been made aware of those from time to time?

A Of disputes between them?

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Q Or concerns raised by those agencies with respect to resources.
A No, I have not.
Q Well, are you aware that they're handled within the office?
A Within the executive office?
Q Right.
A I don't know that they are. I mean, we normally service just the U.S. Attorney's Offices. I would assume that disputes between the U.S. Attorney's Offices and investigative agencies would be handled by the two offices. They may be handled by someone -- another section within the executive office, but in legal counsel's office we didn't get involved normally in things like that.
Q Not your section?
A No.
Q Now, you now know that a memo sent to Doug Frazier by Keeney, and that's the memo that you received from Audrey Word and it's the Bates number 007039 dated March 19, 1993, based on your conversations with Doug Frazier, never got to Doug

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Frazier until you showed it to him -- or I'm sorry, Deb Westbrook gave it to him sometime in late May or June 1993; correct?
A Correct.
Q Jean Lewis expressed her concern for the way this referral was being handled; correct?
A Correct.
Q And Doug Frazier -- it's your understanding that Doug Frazier indicated he never saw this until it was brought to his attention again in late May or June 1993?
A Correct.
Q Now, Jean Lewis was concerned about the way it was handled. You now -- you now know that this was not handled in a typical fashion; isn't that correct?
A Well, Doug had went back to the U.S. Attorney's Office in Florida, so he wasn't there to have seen it.
Q Well, when did he go back to the U.S. Attorney's Office in Florida?
A I don't know. I don't know the time

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frame. I know that when I called him, one of the conversations I had, I called the U.S. Attorney's Office in Florida.

Q But the point is, something was sent to him in March of 1993 and was not acted upon until late May or June 1993; correct?

A Well, he told me he had never seen it. I didn't know if someone else in the Deputy's Office was handling it or not, if it had been turned over to someone else, so I didn't know.

Q But you later learned and you testified today that something was finally sent out to the U.S. Attorney's Office sometime in June 1993?

A Yes.

Q And you earlier referenced Bates number 006675, which is a memo from Debra Westbrook to Doug Frazier dated June 8, 1993 regarding this recusal issue, so she had gathered this -- you had gathered this information together, given it to her, and pursuant to this memo, she had turned it over to Doug Frazier?

A Correct.

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Q And some decision was made subsequent to that resulting in some kind of memo or conversation with the district about what they could do with this case; correct?

A Correct.

Q So you now know by virtue of your discussions with all these people and the documents you've seen that nothing occurred with respect to this between March and June?

A Correct.

Q No action was taken with respect to the district?

A Correct.

Q Otherwise you wouldn't have had to be looking for this paper; correct?

A Correct.

Q And that in fact was Jean Lewis's concern, that nothing was being done; correct?

A Correct.

Q And so you started taking some steps to put this thing back on track; correct?

A Correct.

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Q So her concerns were legitimate at that point in time; correct?
MR. FISHMAN: Objection to what her concerns were and whether --
MR. GICALE: Okay. Let me rephrase that. Strike that question.
BY MR. GICALE:
Q Her concern was it wasn't being acted upon; correct?
A Correct.
Q And what you later learned was that it was not acted upon, correct, until June?
A Correct.
Q Despite the fact that someone had sent a memo in March 1993; correct?
A But I didn't know at the time this memo was sent that it was sent in March.
Q I understand, but you now know that?
A Yes, correct.
Q So a period of time, March -- balance of March, April, May, until June, nothing in fact was done until this was sent out in June; correct?

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MR. FISHMAN: Again, object to the form. I believe she testified she started doing something in May, so --
BY MR. GICALE:
Q I'm sorry, May, but no decision was made, was sent out to the district until June 1993; correct?
A Correct.
Q Or recommendation to the district?
A Correct.
Q And again, it was her phone call that prompted you to start looking for documents with respect to this matter; correct?
A Correct.
Q And it was as a result of this phone call and it was as a result of you obtaining these documents that ultimately the paperwork was sent to Mr. Frazier and Mr. Margolis's office to make a decision; correct?
A Correct.
Q And you ultimately learned that the matter was declined in October of 1993; correct?

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A Correct.
Q Which is almost a year after the initial referral was received in this matter; correct?
A Correct.
Q And you recall the original referral?
A Correct.
Q Why is it that you recall that original referral in October of 1992?
A Because I prepared the urgent report.
Q Was there anything unusual about it?
A It mentioned the President.
Q This was an unusual referral?
MR. FISHMAN: Just for the record, it wasn't the President at the time.
THE WITNESS: It was Clinton.
BY MR. GICALE:
Q Bill Clinton and his wife as witnesses in this matter?
A Correct.
Q It was an unusual referral and an unusual sensitive report; correct?
A All of the urgent reports are unusual or

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they wouldn't come in.
Q It was one you recall because of the parties involved?
A Correct. But I mean, I recall lots of the ones that I've prepared.
Q And would you say it's typical in your experience to have to have a report like this, this sensitive in nature, this recusal request with respect to this kind of a case, a very sensitive case? Is it your typical experience that it would go, for instance, to the Deputy Attorney General's Office and not be seen for three or four months?
A I was not involved in any of the recusals, so I wasn't aware of the time frames that it took. I mean, I knew sometimes they sent it to criminal for their opinion and it takes a while. I mean, I didn't -- at the time I didn't think it was unusual.
Q Well, do you ordinarily track these things for people?
A No.
Q So you don't know what an unusual time is?
A Right, correct. That's what I'm trying to

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say.
Q Now, just to clarify something, the job of the Executive Office for U.S. Attorneys is not to determine who is responsible for taking some substantive action in a case in the Department of Justice, is it?
A Correct, they're not involved in that at all.
Q So reports you prepared in October of 1992, for instance, with respect to the referral were solely for informational purposes?
A Correct.
Q And in fact, the memo that was ultimately prepared on the recusal issue was for action to be taken in some other division of Justice?
A The memo, the recusal memo?
Q Right.
A Was prepared for a decision from the Deputy Attorney General on whether the U.S. Attorney General's Office should recuse itself or not.
Q Now, the initial sensitive report that you received in October 1992, you said that a copy of the

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referral came in with it?
MR. IVEY: You mean urgent report?
BY MR. GICALE:
Q The urgent report. It came in with it. When it was sent up through the director and eventually on to the Attorney General, was a copy of the criminal referral attached?
A Yes, I assume it was attached. The memo said "Attached is a copy of a referral." I assume that it was attached when it went up. I didn't personally deliver it.
Q When you were attempting to locate this document --
MR. FISHMAN: That's not the document she was talking about.
BY MR. GICALE:
Q I'm sorry. When you were attempting to locate the documents that Jean Lewis was describing and you ultimately went to Audrey Word and you found these -- at least these two documents that you've identified today and perhaps others that were attached to it, did you go to Mr. Keeney's office to

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attempt to locate it as well?
A Did I call or did I go there?
Q Either/or.
A I think he was head of the fraud section, and I called that office because that's where I was told it was located.
Q Well, Mr. McDowell was head of the fraud section; correct?
A I don't know who --
Q And Mr. Keeney was acting head of the criminal division; correct?
A Okay. I'm not sure. If you're telling me that's what it was, then I was wrong. I called the fraud section. I didn't call Mr. Keeney's office.
Q Okay. Well, and that is my question, did you ever go to Mr. -- call or go to Mr. Keeney's office --
MR. IVEY: Just so I understand it, by "Keeney's office," you mean as Assistant Attorney General or his personal office? What do you mean?
BY MR. GICALE:
Q As acting Assistant Attorney General in the

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criminal division.
A No, I did not go to his office.
Q Well, the memo that you obtained from Audrey Word, one of the memos you obtained, again, Bates number 007039, was a memorandum from John Keeney to Douglas Frazier?
A Correct.
Q Now, you obtained this from the fraud section?
A Obtained it from Audrey Word. I don't remember if she was -- I was told it was in the fraud section.
MR. GICALE: Off the record.
(Discussion off the record.)
BY MR. GICALE:
Q So then just to straighten this out, you obtained this from the fraud section, Audrey Word, and we've now determined that she's in the fraud section?
A Correct.
Q Now, when you found out from Doug Frazier that a memo was sent out to the district or something

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was sent out to the district on this case, and that would have been in June of 1993, there is this note that you identified earlier on Bates number -- document with the Bates number labeled 006675, "Per Doug, sent back to district for decision."

Did he tell you whether or not it was sent back by virtue of some kind of memorandum that was sent out, a document, or was it a phone call or did he tell you how they were notified?

A Not that I can recall, no.

Q Did he ever tell you whether a document of some sort was sent out under David Margolis's signature?

A No.

Q Were you ever told to look for a document sent from -- under David Margolis's signature to the district?

A No.

Q Did you ever talk to the district about whether or not they received a document from criminal -- from David Margolis's office or Doug Frazier's office with respect to the decisionmaking

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on this?

A No.

Q Are you aware of the fact that a memo was sent to the district?

A No. I don't know how -- I was told by Doug that it was sent back to the district, but I wasn't aware of how it was sent back.

Q And again, once -- after that point in time, the next time you heard about this matter was sometime in September of 1993?

A I talked to -- yes. When I talked to Paula Casey. I'm sorry, I had conversations with Jean Lewis, I'm sure, in the meantime.

Q But once you told her that it was sent back to the district, sometime in June '93, the next time you had conversations with them was sometime around September 1993?

A I don't recall the dates. I don't know -- I don't dispute Jean Lewis's E-mail, if that's what she has.

MR. GICALE: I have nothing further.

EXAMINATION

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BY MR. IVEY:
Q I have some follow-up questions.
You were asked some questions about disputes between U.S. Attorney's Offices and investigative agencies when you said that those aren't handled by the EOUSA's office; is that correct?
A It wasn't handled by legal counsel's office, my office.
Q And typically the office -- your office would not handle disputes that involved any type of prosecuted merit issues; would that be correct?
MR. GICALE: Objection as to form. Which office are you talking about when you say her office?
BY MR. IVEY:
Q Office of Legal Counsel.
A We would not normally get involved in those things.
Q What about the whole executive office?
A I don't know if they -- what the other sections do.

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Q Now, you were also asked some questions about Jean Lewis's phone calls. Did you know that Jean Lewis started calling U.S. Attorney's Office in Arkansas as early as October 1992?
A No.
Q Do you know how many phone calls she made to that office?
A No.
Q Now, with respect to Mr. Frazier, you testified that the memo was sent from your office to Mr. Frazier, I think in March 1993?
A No.
Q No?
A We sent it to Doug in June --
MR. GICALE: Which memo are we talking about?
BY MR. IVEY:
Q 3-19-93 memo from Doug Frazier to John Keeney re: recusal?
A That was done by the criminal division.
Q So this time lapse you were questioned about March -- questioned about between March 19 and

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June 23 was the period in which this memo was in Mr. Frazier's office, apparently. Is that your understanding?

A Well, I believe Mr. Frazier was the U.S. Attorney in Florida at the time, so I don't know whose office it was in.

Q Well, that was going to be my question. There was some turnover, I take it, in the Deputy Attorney General's office?

A Yes.

Q And that would have been because of changing the Administration?

A Correct.

Q And Mr. Frazier was not -- your understanding, at least, was not in Washington during that entire period?

A Not that I can recall. I don't know the exact dates that he left and came back.

Q Did you get any sense when you spoke to Mr. Frazier after you sent the information the second time that there was any attempt to bury the referrals at all or dodge the recusal issue?

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A No.

Q Did you get any sense that there was anything untoward going on?

A No.

MR. IVEY: Just a moment, please.

(Pause.)

(Recess.)

MR. IVEY: Just for the record, then, thanks for coming. I appreciate your time.

THE WITNESS: You're welcome.

EXAMINATION

BY MR. GICALE:

Q One quick question. With respect to when -- just to clarify something, do you know with certainty when Doug Frazier left his position in the Deputy Attorney General's Office and when he went to Florida to assume his position there?

A No, I don't. He was in EOUSA on active detail. He was an executive attorney in the Deputy's office, he was the U.S. Attorney in Nevada for a period of time, so I have no idea when he was coming and going. He did a lot of things.

Q So you cannot say with certainty whether or not he was in the office at the time the 3-19-93 memo was sent up to him?

A Correct.

MR. GICALE: I have nothing further.

MR. IVEY: Have a good lunch.

(Whereupon, at 12:11 p.m., the deposition was concluded.)

DONNA O'DOWD

CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

My Commission Expires MARCH 14, 1998

U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

October 11, 1995

Mr. Robert Giuffra, Chief Counsel
Mr. Lance Cole, Democratic Deputy Special Counsel
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, D.C. 20510-6075

Dear Messrs. Giuffra and Cole:

Pursuant to your request, enclosed is the deposition transcript for Donna Henneman dated July 20, 1995. Ms. Henneman was deposed by the House Committee on Banking and Financial Services as part of that Committee's investigation into Madison Guaranty Savings and Loan and related matters.

Also enclosed is the errata sheet executed by Ms. Henneman on August 16, 1995, in which she notes errors in the transcription of her testimony. Those changes, as you know, are now incorporated into the record.

If you have any questions, do not hesitate to contact me.

Sincerely,

Charles J. Sgro
Counsel to the
Deputy Attorney General

cc: Stephen Kubiatowski

U.S. Department of Justice

Office of the Deputy Attorney General

Washington, DC 20530

August 16, 1995

Tom Clark
Senior Counsel
Oversight and Investigations
Committee on Banking
and Financial Services
U.S. House of Representatives
Washington, DC 20515-6050

Dear Mr. Clark:

The following errata are noted in the transcript of my deposition of July 20, 1995:

1. P. 5, line 1: strike the words "three to" in between "Approximately" and "three".

2. P. 12, line 22: strike "6," and replace with "of".

3. P. 14, line 14: insert "she" between "it," and ~~"told" and~~ insert "it" after "that" and before "had".

4. P. 16, line 8: strike the word "or" and replace with "are"; also insert a comma after "name".

5. P. 19, line 7: strike "Secretary" and replace with "Secretariat".

6. P. 21, line 21: strike "Secretary" and replace with "Secretariat".

7. P. 23, line 22: insert "we" after "Doug," and before "sent".

8. P. 27, ~~line 10: strike "THE" and replace with "the".~~

9. P. 31, line 11: strike "from" and replace with "for".

10. P. 56, line 8: strike the lower case "a" and replace with a capital "A" in "associate" so that it reads "Associate".

11. P. 57, line 2: strike "Secretary" and replace with "Secretariat".

12. P. 65, line 7: strike the word "be".



13. P. 65, line 11: insert ~~"the" after~~ "contact" and before "U.S.".

14. P. 73, line 3: strike the word "copies" and replace with "problems".

15. P. 74, line 19: strike the word "say" and replace with "said".

16. P. 80, line 6: insert "I" before "told Paula Casey".

17. P. 84, line 21: strike the words "I know all that,".

18. P. 85, line 9: insert "together" after "put" and before "the chronology".

19. P. 85, line 19: strike the word "remember" and replace it with "remembered".

20. P. 92, line 14: strike the word "give" and replace with "gave".

21. P. 97, line 23: strike the words "did not" and replace them with "may have", also replace the word "use" with "used" and strike the word "no".

22. P. 105, line 23: replace "Secretary" with "Secretariat".

23. P. 107, line 1: replace "Secretary" with "Secretariat".

Sincerely,

Donna Henneman

Donna Henneman
Ethics Program Manager
Executive Office for
U.S. Attorneys

cc: Angie Garcia

RPTS WHALEN

DCMN PARKER

COMMITTEE ON BANKING AND FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

In the matter of:	
MADISON GUARANTY SAVINGS & LOAN	DEPOSITION OF DONNA HENNEMAN

Thursday, July 20, 1995

Washington, D.C.

The deposition in the above matter was held in Room 714, O'Neill House Office Building, commencing at 1:30 p.m.

Appearances:

Staff Present for the Banking and Financial Services Committee: Thomas Clark, Senior Counsel and Angela Garcia, Minority Staff.

For Department of Justice:

PAUL FISHMAN
CHARLES J. SGRO
10th and Constitution Ave. N.W.
Washington, D.C. 20530

WHEREUPON,

DONNA HENNEMAN,

a witness in the above-entitled matter, was called as a witness, and having been first duly sworn or affirmed to tell the truth, the whole truth, and nothing but the truth, was examined and did testify as follows:

Mr. Clark. Good afternoon, Ms. Henneman. My name is Tom Clark. I'm Senior Counsel to the Committee on Banking and Financial Services. I appreciate your being here today. Also present today is Minority professional staff member, Angie Garcia.

As you know, the committee is investigating the failure and resolution of Madison Guaranty Savings and Loan Association and related matters, including the executive branch's handling of Madison Guaranty. Most of my questions will be related to that area.

I will have some questions for you, almost definitely I'm going to show you some documents. After I'm finished, Ms. Garcia may have some questions for you. When she's finished, counsel for the Department of Justice may ask questions. Then there may be some additional questions after that.

This deposition is not governed by the Federal Rules of Civil Procedure, but objections may be made for the record. If an objection is made, the question will either be

withdrawn, recast or allowed to stand in the discretion of the questioner. If there is an instruction not to answer a question, and that instruction is followed, Majority staff in consultation with Minority, will determine if the deposition is to proceed or if a recess must be called to obtain the Chairman's instructions, if any. In a spirit of cooperation the committee hopes to avoid reaching that point.

Any time you feel the need, we can take a break. If you don't understand my question, just say that you don't understand and I will try to reword it so that we are clear. If at any point it occurs to you that something you said earlier wasn't exactly the way you remember it, you can stop and say I would like to clarify something I said earlier. At the conclusion of this, you will also have an opportunity to read the transcript and you can make any changes.

The Witness. Okay.

Mr. Clark. Okay. So take as much time as you need.

EXAMINATION BY MR. CLARK:

Q What's your current job title?

A Ethics program manager.

Q At the Executive Office for U.S. Attorneys?

A Yes.

Q Okay.

And approximately how long have you been in that position?

A Approximately three to three-and-a-half years.
Q Give me a month when you started, if you can.
A I've been in the Executive Office since November of '88, I believe. I started doing ethics program approximately '92, '92, '92, I don't remember exactly.
Q Okay.
What was your job title before that?
A Secretary.
Q Okay.
And was that when you began with the Department in November of '88 or had you worked elsewhere in the Department of Justice?
A I worked elsewhere. For immigration.
Q Okay.
And approximately how many years did you work with Immigration?
A Two.
Q And was there a particular office, did it have a title?
A Yeah. The Baltimore field office.
Q And what was your job title there?
A Clerk typist.
Q Any other government jobs prior to working at the Immigration Office in Baltimore?
A No.

Q Okay.

Just you have to verbalize your answers so that the reporter is clear as to how you are responding.

A Okay.

Q Some people go diagonally.

What is your understanding of your primary job function as ethics program manager?

A I provide ethics advice to the U.S. Attorney's Offices and the Executive Office for U.S. Attorneys on outside activities, employment, gifts, conflicts of interest.

Q Okay.

So you would be familiar with things such as the Hatch Act?

A Yes.

Q And do you provide that advice to both the attorneys and the nonprofessionals or one or the other?

A Both.

Q Do you have a law degree?

A No.

Q Now, when you say that you provide ethics advice to attorneys, is that -- can you tell me generally speaking how you accomplish that?

A How I accomplish that? I don't understand.

Q Okay. Fair enough.

Are you actually receiving inquiries and giving

substantive advice or are you procedurally just communicating other people's advice to attorneys?

A Both. If I know the answer, I'll give them the advice. If it's a complicated issue I'll talk with someone else in the office.

Q Okay.

So there are times when you're involved in actually analyzing substantive ethics issues that involve lawyers?

A Yes.

Q And have you had any sort of training within the department to help you perform that job?

A I've been to several ethics conferences and training seminars, yeah.

Q Run by the Department?

A Or the Office of Government Ethics.

Q Now just to be clear, the Office of Government Ethics is an entity outside the Department of Justice?

A Yes. It's -- it runs the ethics program for the entire executive branch.

Q And in that capacity for a time you were working with Deborah Westbrook?

A Yes.

Q Approximately how long do you remember working with Ms. Westbrook?

A Two, two-and-a-half years. The entire time she was

at the Executive Office I worked with her.

Q Now, as I understand it, there were other attorneys within the Office of Legal Counsel for the Executive Office?

A Yes.

Q I'm talking the period from, say, '92 through '94?

A Yes.

Q Okay.

Did you consult and work with those other attorneys as well?

A Yes.

Q Was Ms. Westbrook in charge of the other lawyers as far as you knew?

A Yes.

Q Now, there came a time in about October of 1992 when you received or -- withdrawn.

There came a time in approximately October of 1992 when a gentleman named Mac Dodson faxed you a large document concerning the Resolution Trust Corporation referral?

A Yes.

Q Do you recall that?

A Yes.

Q Can you tell me what you recollect of the circumstances under which you first became aware that you would be receiving that?

A I don't -- I don't recall if he called or if it just

came over the fax machine, but I remember receiving the document and preparing an urgent report.

Q Okay.

You don't recall having spoken with Mr. Dodson before he sent you the fax?

A I don't recall.

Q Would it be usual for people to fax things to you as opposed to, say, one of the attorneys in the office?

A Would it be usual for them to? Yes.

Q Other than a telephone conversation, how might Mr. Dodson have known your name in particular?

A Because I prepared the urgent reports for the office and the field -- a lot of the people in the field knew to send it to me. I was the contact.

Q And do you know how that was communicated? To the people in the U.S. Attorney's Offices?

A I believe it was in the orientation manual with my name as the contact.

Q When you were referring to the orientation manual, could you be a little more specific about what that is?

A The Executive Office has an orientation manual that they give out to all the U.S. Attorney's Offices which basically lists all the sections within the Executive Office and what each section does and within our section it -- we handle the urgent or sensitive case reports and they all --

after it gives a brief description of what it is and what we do, it gave a point of contact and I was the point of contact.

Q Now, you do recall receiving this large fax?

A Yes.

Q And what did you do when you got it?

A Prepared an urgent report.

Q And who was that prepared for?

A It was for the Attorney General, the Deputy Attorney General and the Associate Attorney General.

Q Was there somebody within the Executive Office that had to see it before it went out to those individuals?

A Yes.

Q Who was that?

A Deborah Westbrook normally reviewed it and then it would go up to the Director of the Executive Office for signature.

Q And at that time, who was that?

A Larry McWhorter.

Q Okay.

Now, you say it was normal that Ms. Westbrook would review the urgent reports?

A Yes.

Q To your understanding, was that just the ones that you prepared or was it all of the urgent reports that anybody

might have prepared within the office?

A All of them that anyone prepared.

Q And was there any standard practice to indicate that she had, in fact, reviewed them?

A You would put your initials on the yellow sheet, the office file copy.

Q Okay.

And as you understood it, before you could take it to Mr. McWhorter, you had to check for that?

A That was normal procedure. I mean there was times she wasn't there that we would take them, you know, without her signature, but, yes, she normally reviewed them.

Q Okay.

Now, this first urgent report that was prepared, do you recall if there was any separate document other than the large fax that you looked at in order to figure out what you had to include in the urgent report?

A I think there may have been a cover letter attaching to it the referral.

Q Okay. But you're not sure?

A I'm not positive.

Q Okay.

Do you have any recollection of having a conversation with Mr. McWhorter about the fact that this matter had been delayed in the U.S. Attorney's Office in Arkansas for some

time?

A It wasn't Larry McWhorter. It was Wayne Rich.

Q You're recollecting a conversation with Mr. Rich about the very first urgent report, is that --

A He asked me why it sat in the U.S. Attorney's so long and I told him I didn't know and I believe he contacted the office.

Q Okay. He didn't ask you to do that?

A No.

Q Do you remember any subsequent conversation with Mr. Rich where he discussed the substance of any conversation he may have had with anyone out in Little Rock?

A No.

Q Now, do you recall consulting with Mr. Rich, Ms. Westbrook, or anybody else about the text of the urgent report that you prepared?

A There -- there's one line in there that I -- I don't recall who asked me to put it in there, but I know I didn't put it in there about the U.S. Attorney's Office believing that there was -- the issue should be looked into further, something to that effect. I -- when they would come in we would normally just look at it and put attached is a copy 6, a letter just basically what the document was and I probably did that myself, but I don't know where that line came from.

Q I mean, do you have a firm recollection that

somebody else instructed you to put that in there?

A No. I don't have a firm recollection, but I know I wouldn't have just put it in there without being instructed.

Q You worked with these urgent reports on a fairly frequent basis; is that correct?

A Yes.

Q How many -- what would be the maximum number that you might put out in a week, your office? In 1992?

A There was weeks you may have two or three. There was weeks that go by you would have none. It's hard to say.

Q Okay.

I'm asking if you can give me an estimate of the most you ever put out in a week.

A Five.

Q In 1992, I take it there was only one urgent report that mentioned Bill Clinton? Withdrawn. Withdrawn.

In 1992, there was only one investigative matter about which urgent reports were prepared that mentioned Bill Clinton; is that correct?

Mr. Fishman. Go off the record for a second.

[Discussion off the record.]

BY MR. CLARK:

Q Ms. Henneman, the urgent report that you prepared based on Mr. Dodson's documents, it was something that stood out in your mind; is that fair to say?

A Yes.

Q Okay.

And the reason it stood out in your mind was because it identified Bill Clinton as a person who might be somehow involved as a witness?

A Yes.

Q Okay.

Now, after your participation in the preparation of that urgent report, when was the next time that you can remember being involved in anything having to do with that same subject matter?

A Well, another urgent report, an updated report came in and I didn't prepare it, but I remember Stephanie Johnson prepared it, told me that had come in and I advised her to pull the previous report and attach it and send it up again.

Q And Ms. Johnson was a secretary; is that correct?

A Yes.

Q The second report, do you recall whether there was any event that caused the second report to be prepared?

A I don't -- I don't know. I wasn't involved with it.

Q Do you recall receiving a letter from the U.S. Attorney in Arkansas, a cover letter enclosing another letter?

A No.

Q Now, at that time in October of 1992, to your understanding there was no formal request being made that the U.S. Attorney's Office in Arkansas be recused in connection with this matter?

A No. Not when I did the urgent report.

Q Now, do you recall if there came a time subsequently when there was a request from the U.S. Attorney's Office?

A Yes.

Q To be recused?

A Yes.

Q And do you recall approximately when that happened?

A No, I don't.

Q And what's your recollection of your first knowledge that there was a formal request for recusal?

A Well, the U.S. Attorney sent the letter to me because they had sent the urgent reports addressed to me and I assume I received the letter and gave it to Deborah because I wasn't involved with recusals and it was handled by an attorney in the office.

Q Now, you say they sent you the later letter because they sent you the earlier letter; is that your assumption, is that right?

A Yes. My assumption.

Q Now, did you have any role whatsoever in the preparation of the recusal memo that went up to the Deputy

Attorney General's Office?

A No.

Q Were you familiar with a log that was maintained in the Executive Office for U.S. Attorneys for recusal memos?

A Yes.

Q Okay. Can you describe that?

A It's just a log that we track all the recusals that come in, just normally the fields or the U.S. Attorneys name the district, the reason for recusal, where, who or where the case is going to be handled, whether it be someone within the office or another office. The date that it was approved..

Q Okay.

Would it also indicate the date that it was sent upstairs?

A At that time it did not. At this point it does, I believe.

Q Okay. Now, can you describe it for me physically?

A It's just in WordPerfect format.

Q Oh, it's a computer file at this time?

A Yes.

Q Was it a computer file in 1993?

A Yes.

Q Who was in charge of maintaining and updating the information contained in the computer file in 1993?

A Stephanie Johnson.

Q Is that still the case?
A Yes.
Q Is Ms. Johnson still working in the Executive Office?
A Let me back up for a second. Recently, we stopped doing it by WordPerfect file. It's now logged into a computer database on our oracle system. I don't know if you're familiar, but it's like a database. They are logged into that database so they are not logged into WordPerfect any longer.
Q Okay. But it's still in a computer file?
A Right, yes. And Stephanie still handles it.
Q Okay.
And in '93, you can't remember it ever being in some sort of book or loose-leaf notebook or a spiral binder?
A No.
Q Now, I take it you're familiar with the name, Jean Lewis?
A Yes.
Q Can you tell me, Ms. Henneman, your recollection of your first conversation with Ms. Lewis?
A She called looking for the referral that she had sent to the U.S. Attorney's Office. She wanted to know whether the U.S. Attorney's Office was going to decline the case or whether they were going to accept it and initiate investigation.

Q Okay.

Now, do you have a recollection as to when in time Ms. Lewis' call came in relation to when the recusal request had been made?

A I believe it was after the recusal.

Q Okay.

Do you have a recollection of it being a substantial period of time?

A I don't -- I don't recollect.

Q Okay.

And why don't you just tell me as best you can the actual specifics of your conversation with Ms. Lewis, your first conversation.

A Basically, what I told you that she was looking for, the referral, and wanted to know whether the U.S. Attorney's Office was going to prosecute or whether they were going to decline and I told her I remembered receiving the referral because I had prepared an urgent report and that it had went up to the Deputy Attorney General and the Attorney General and that I didn't know where it was from there. It was probably still up there.

Q Okay.

Do you remember if you gave her any indication that you would take any action to try to locate it?

A I told her I would.

Q Okay.
Do you recall if you actually took any steps?
A Yes, I did.
Q Can you tell me what you did?
A I believe the first thing I did was ask Deborah if she knew where it was and she told me she thought Doug Frazier was handling it. I remember calling the Executive Secretary, which tracks all the correspondence for the Attorney General and the Deputy Attorney General. And was told by them that it was in the Criminal Division.
I contacted the Criminal Division and talked to someone there who was able to track down a memo from the Criminal Division to I believe it was somebody in the Deputy Attorney General's Office. I'm not positive and I talked to her and told her what I had found. I read her the cover of the memo from Criminal Division and told her what I had found. Where it was.
Q When you say you read to her the memo, who is her?
A Jean Lewis.
Q Okay.
Now, this all didn't occur in a single day I take it?
A No, no. It took -- probably it took a couple of weeks, my guess.
Q Okay.
Do you have any recollection of telling her in the very

first conversation ~~that the matter~~ -- withdrawn.

Do you have any recollection of telling Ms. Lewis in your very first conversation that the Department of Justice was recommending that ~~there be a declination~~ on the referral?

A I think I told her that because I was told that by someone and I found out I was mistaken and went further and tracked it down. I don't -- I don't -- I remember telling her something and it was wrong and finding out later that I was wrong after I found it in Criminal, but I don't remember who had told me it was declined or how I knew that or said that or why I said that.

Q Okay.

And you had a number of conversations with Ms. Lewis over the course of some months; is that right?

A Yes.

Q Okay.

In the course of your conversations with her, did you make any attempt to give her information that you knew to be incorrect?

A No.

Q Did anybody in the Executive Office for U.S. Attorneys ever instruct you that you should give Ms. Lewis any ~~inaccurate information~~ --

A No.

Q -- ~~on purpose?~~

A No.

Q Did anyone outside the Executive Office for U.S. Attorneys, but within the Department of Justice ever give you any sort of instruction like that?

A No.

Q Okay.

So you were just trying to be helpful to Ms. Lewis, is that fair?

A Yes.

Q And there was some occasions where you called her?

A Yes.

Q Now, do you recall there coming a time when -- withdrawn.

Do you know an individual named Audrey Word?

A I don't know her, but I spoke with her. I believe she was the person in Criminal Division that I spoke with.

Q Do you know what her job title was?

A No.

Q And when you spoke to Ms. Word, what can you remember of your conversation with her?

A I had been told by the Executive Secretary that the referral or the recusal had gone to Criminal Division and I called her and told her what I had learned, that it was supposedly in the Criminal Division and I gave her the control number and asked her if she could check and see if it was in

fact there.

Q And did you get any sort of response from Ms. Word?

A Yes. It was there. She gave me a copy of it.

Q Did she do anything more than just give you a copy?

A No, not that I -- I mean -- no. They gave me a copy of the memo.

Q Did you make any inquiry as to whether the memo that you received was final?

A No.

Mr. Fishman. I'm sorry, which memo that she received?

Mr. Clark. Well, you tell me.

BY MR. CLARK:

Q What do you remember of this memo that you received from Ms. Word?

A It was a memo from --

Q Let me ask it this way.

Was it a cover memo or was it a substantive memo?

A Cover memo. It was just a couple of lines.

Q Okay.

So you don't remember when you received this group of documents from Ms. Word that there was some sort of document indicating action to be taken?

A No. There was attachments, but I don't -- I didn't read any of that.

Q Okay.

Do you recall ever having a conversation with Doug Frazier -- about?

A Yes.

Q -- about the status of the first referral?

A Yes.

Q And do you remember if you called him or if he called you?

A I called him.

Q And what was your purpose when you called him?

A To find out if he knew what the status was.

Q Okay.

And what do you recall Mr. Frazier telling you?

A That he thought it was sent back to the U.S. Attorney's Office.

Q Do you have any recollection of ever having a conversation in which Mr. Frazier told you he didn't remember what you were talking about?

A No.

Q Do you have any recollection of having to send Mr. Frazier the memo a second time?

A We sent the memo to someone up in the Deputy Attorney General's Office. I believe it was Doug, sent it back up to him.

Q Okay.

A He was in Florida so I don't know if that's who we

sent it to.

Q Okay.

When you say he was in Florida, can you just explain a little bit more what you mean by that?

A He was -- he was the U.S. Attorney or acting U.S. Attorney for some time in Florida. He bounced back and forth between Florida and the Department.

Q By the way, was Mr. Frazier ever within the Executive Office for U.S. Attorneys?

A Yes.

Q Was he in that office during the time when you were in the office?

A Yes.

Q And was he in the Office of Legal Counsel?

A No.

Q No. Was he the Director?

A He was Deputy Director, I believe.

Q And do you know whether he went directly from that position, Deputy Director, EOUSA, up to the Deputy Attorney General's Office?

A I don't know. I don't know.

Q Okay.

Now, do you have a recollection of at some point receiving a final decision from Mr. Frazier? On this Criminal referral?

A No.

Q You're familiar with the name, Paula Casey?

A Yes.

Q Have you ever had any personal conversations with Ms. Casey?

A Yes.

Mr. Fishman. I'm sorry. By personal conversations I assume you mean between the two of them, as opposed to about personal matters.

Mr. Clark. Yes.

The Witness. Yes.

BY MR. CLARK:

Q Phone conversations or face to face?

A Phone.

Q Okay.

Have any of your phone conversations -- withdrawn. Approximately how many can you remember having had with Ms. Casey in 1993?

A Two or three.

Q And do you recall whether any of them related to Jean Lewis or either the original criminal referral that Ms. Lewis generated or the subsequent group of referrals?

A Yes.

Q How many of those two or three conversations related to that general subject matter?

A All of them.

Q And beginning with the first conversation that you can recall, do you remember what the specific topic was?

A The fact ~~that the referrals~~ -- the referral from Madison was being sent back to her office. I explained to her that Jean Lewis had been trying to find out whether the office was going to take any action or whether they were going to decline it and asked her if she could please review it and send a letter to Jean Lewis letting her know what the office was going to do.

Q Okay.

When you called Ms. Casey on that occasion, is it your recollection that that is the first time that you spoke to her about anything?

A That I can recall, yes.

Q Okay. Did somebody ask you to call Ms. Casey?

A I don't remember if someone asked me. I was just, again, trying to be helpful to Jean to get a letter for her because she wanted to close out her files. That's what she kept telling me, so I don't know if I did it on my own or if Deborah told me to or what, but I called her to ask her to send Jean a letter so it could be taken care of.

Q Okay.

And the next conversation that you may have had with Ms. Casey in 1993, on this general subject matter, can you

remember what specifically you spoke about?

A I believe she said that she had reviewed it or she would review it and send the letter to Jean. She also told our office about some problems that her office had had with the RTC in general. Deborah was also on the phone.

Q It was a three-way call?

A Yes. She was telling us about the problems with the RTC and I believe Deborah said she would do, she would see what she could do if she would contact somebody here in Washington at the RTC to take care of THE problem. That's about it.

Q Do you have any recollection of the time that would have passed between these conversations? Was it a day or --

A I would think it would be a few days, but I don't recall exactly. It was within days.

Q Do you recall having a third conversation with Ms. Casey on this topic or no?

A Yes.

Q Okay.

This third conversation, was it just you and Ms. Casey? Or were --

A Yes. Yes.

Q And what was the specific subject matter of this third call?

A Well, Jean Lewis had received the letter from Paula

Casey. I think it was declining to investigate. I'm not positive, but Jean had told me she was sending over somewhere around 8 to 10 more referrals to the U.S. Attorney's Office and she was concerned that they would get the same treatment as the Madison Guaranty referral would.

I told her that, you know, to send them over and to send a cc: of her cover letter to us and we would contact Ms. Casey and tell her that they were on their way. I called Ms. Casey and told her that -- you know, that Jean had called and was concerned that they received bad treatment and that they would be on their way and she said she would take a look at them.

Q After that, do you recall any further conversations with Ms. Casey on the general subject matter of Ms. Lewis or the RTC referrals?

A No.

Q Okay.

After that, did you have any personal involvement with either Ms. Lewis, Ms. Casey, or these referrals?

A The subsequent referrals, the additional ones she was going to send?

Q Anything having to do with Ms. Lewis, Ms. Casey, or either the first or the second group of referrals, did you have any personal involvement in anything?

A No.

Q Okay.

At around the time of these three phone calls with Ms. Casey, were you questioned by anybody about your communications with Ms. Lewis.

Mr. Fishman. Wait. Can you set some parameters to the question, Mr. Clark?

BY MR. CLARK:

Q Ms. Henneman, at about the time of these three calls with Ms. Casey that you have just spoken about, can you recall being questioned by anyone within the Department of Justice concerning your telephone conversations with Ms. Lewis?

A No.

Q In November of 1993, were you questioned at all by Gerald McDowell --

A No.

Q -- about Jean Lewis?

A No.

Q Were you questioned by John Keeney about Ms. Lewis?

A No.

Q Were you questioned by Don MacKay about Ms. Lewis?

A No.

Q In November of 1993 did Ms. WestBrook question you about your whole series of contacts with Ms. Lewis?

A She didn't question me about it. I mean we had -- I had kept her apprised of what was going on throughout the entire time. There was no questions. I'm sure there may have

been conversations but not -- I wasn't questioned by her.

Q I understand that, you know, as you were going along you were keeping her up to date. My question is just a little bit different. Was there a specific discrete time where somebody came up to you and in this case Ms. Westbrook and said, listen, I need to review with you the whole history of your communications with Ms. Lewis and I'm talking now just about November of 1993.

A No.

Q Okay.

Did there come a time after November of 1993 when anyone within the Department of Justice asked you to go back -- withdrawn.

Subsequent to November of 1993, was there ever a time when anyone within the Department of Justice questioned you about the history of your communications with Jean Lewis.

Mr. Fishman. Let me, before you answer the question, I assume, Mr. Clark, that, and we perhaps we should explain to Ms. Henneman that that excludes Mr. Fisk or anyone working on his staff, the independent counsel or anyone working on his staff or anyone collecting information or documents in response to requests by either one of them.

Mr. Clark. Do you understand that?

The Witness. Yes.

Mr. Fishman. I just wanted to make sure we are clear for

the record.

BY MR. CLARK:

Q Okay.

Can you recall any situation apart from special counsel or independent counsel where anyone within the Department of Justice asked you questions about the history of your communications with Ms. Lewis?

A Yes.

Q Who do you remember?

A Lou DeFalaise asked me to put together a chronology for a request that came from documents, I believe -- I think it came from the Hill. It may have been from independent counsel. They wanted a copy of all documents that the Department had concerning this request. So I was asked to put all the documents together that I had.

Q Just explain for me who Mr. DeFalaise is?

A He's special counsel to the Director, I believe, of the Executive Office.

Q Can you give me even a guess as to when this might have occurred?

A I have no idea.

Mr. Fishman. You can say that out loud.

The Witness. I have no idea.

BY MR. CLARK:

Q Okay.

Now, you did, in fact, prepare a chronology; is that correct?

A Yes, I did.

Q And you did this with Ms. Westbrook; is that correct?

A Yes.

Q Did the two of you discuss how you should go about preparing the document?

A No. She just told me to put together everything I remembered and she would put together everything that she remembered or conversations that we each had and then we would just kind of combine them.

Q Okay.

And once you had actually put down your recollections, did you and Ms. Westbrook sit down and review the document?

A I put it together and Deborah reviewed it and added her conversations that she had with Paula Casey and she made the changes and I made them on the computer and that was it. I don't recall discussing it with her.

Q Okay.

And was it your intention to document every contact that related to the subject matter of Ms. Lewis or these referrals?

A I -- I didn't document every conversation I had with Jean because I couldn't remember all of them.

Q Okay.

Let me approach it this way. What can you recall being the request or instruction from Mr. DeFalaise?

A All documents relating to the referral and any conversations that we had with anyone regarding the referral.

Q Do you know what he did with this document once he had it?

A No. I assume he turned it over to whoever in the Department was asking for all the documents.

Q Okay.

And you just don't know who that is?

A No.

Q Now, showing you what's marked for identification as Bates number 007087 and then 007057 through 7077, which should be consecutively numbered pages between 57 and 77.

Mr. Fishman. Off the record.

[Discussion off the record.]

BY MR. CLARK:

Q Just take a look at that, Ms. Henneman. Does it look familiar to you?

A I believe this is the original referral that came in as an urgent report. I didn't read it, so --

Q Okay.

Well, if you look on the facsimile cover sheet the first page. Okay.

It's got a date of 10-6-92, correct?

A Uh-huh.

Q Then, if you turn to the first page, the cover letter from Mr. Iorio to Mr. Banks up at the top it has what's commonly called a fax line; is that correct?

A Yes.

Q Okay.

And that fax line indicates from U.S. Attorney's Office?

A Yes.

Q And it has a date of October 6th of '92 at 1546 on 007057. Is that right?

A Yes.

Q So that's about 3:46 in the afternoon?

A Yes.

Q When it began transmitting.

I am now going to show you document Bates stamped number 007193 through 007213. And I'm going to represent to you, and you can confirm this for yourself, that this is another copy of the cover letter -- withdrawn.

This is a copy of a cover letter from Mr. Iorio to Mr. Steve Irons, a supervisory special agent with the FBI and then underneath that cover letter, there's a copy of the RTC criminal referral. Is that what you have in front of you?

A Yes.

Q Now, if you look at page 007202, okay. At the top

that has a fax line, too; is that right?

A Yes.

Q And that fax line reads, October 6, 1992, at 1701 from Little Rock, ARK; is that correct?

A Yes.

Q Ms. Henneman, you didn't request a copy of the referral from the FBI on October 6th of 1992, did you?

A No.

Q Do you know or do you recall receiving within EOUSA a second copy of the referral?

Mr. Fishman. I'm sorry. Mr. Clark, do you have a copy of the index we provided because I'm not sure whether this document came from EOUSA or from the FBI. I just don't know if it said. I'm just asking.

Mr. Clark. I don't have it with me, number one, and number two, I found your index to be somewhat unilluminating as to the origin of many documents and, in fact, I believe that Mr. Sharman is going to put in writing our request that you specify the locations of the documents that we have received.

For instance, many of the handwritten notes, I can't tell who produced them and subsequently I'm spending a lot of time showing handwritten notes to people because I have no idea whose notes they are, so I don't think I can answer your question.

Mr. Fishman. Okay.

I certainly don't have any objection to providing you that information to the extent that we can. I think you will find in our original transmittal letter that we followed the same practice this year that we followed last year with both the Senate and the House and that we followed this year with the Senate which that many of these documents were in multiple files and we did not provide multiple copies if there were no additional -- there was no additional writing, for example, on particular documents.

We are not adverse at all if you want to know where the multiple copies were located in various files to providing you that information to the extent that we have it. For example, this referral may have been in the U.S. Attorney's Office in Little Rock. It may have been in EOUSA, it may have been in the Deputy Attorney General's Office. It may have been in the Fraud Section and rather than provide the committee with four times the amount of paper in a situation like that, we advised the committee we would provide just one copy, but would let you know where the others were.

Mr. Clark. Sure, I appreciate it and it is standard practice, you know, nonidentical copies, you know, it is information that we need, the location of particular things. I don't think we need to dwell on this.

Mr. Fishman. Fine, we'd be happy to provide the

information to the extent that we can.

Mr. Clark. Okay.

I will just note for the record that the document that I have just shown the witness, the very first page on the fax line it says, page 7, indicating to me at least that there was perhaps a cover page and five pages on top of that. If that is at all responsive to the committee's outstanding document request, I would request that they be provided.

Mr. Fishman. We will check.

Mr. Clark. Thanks.

BY MR. CLARK:

Q Ms. Henneman, this single-page document that I'm showing you now is Bates stamped 006641. Have you seen that?

A Yes.

Q Withdrawn.

In approximately October of 1992 did you see that?

A Yes, I prepared it.

Q Okay.

And can you just describe for the record what that is?

A It's an urgent report.

Q And this is the urgent report that was prepared specifically with regard to the matter that Mr. Dodson faxed on October 6th of 1992?

A Yes.

Q Now, at the bottom left-hand side you see some

letters beginning with the letter "L" and some colons and some more letters, do you see that?

A Yes.

Q Can you just explain to me what that is?

A What we do is put the initials of everyone who needs to initial off on this starting with the highest level so LSM is Laurence McWhorter. DCW is Deborah Westbrook and DH is myself.

Q Okay.

Now, I don't see Stephanie Johnson's initials on this. Do you?

A No.

Q Okay.

Were there occasions when you actually prepared this form yourself by sitting at a computer or at a typewriter?

A Yes.

Q And is that what this series of letters indicates on the lower left-hand side of this document?

A Yes.

Q Now, does the presence of these letters here indicate to you one way or the other whether this particular document, meaning the urgent report with all the identifying marks, was sent outside the Executive Office for U.S. Attorneys?

A Does this identify whether it was sent out?

Q Yes.

A The letters?

Q I will withdraw that.

Now, the urgent report was prepared and distributed, correct?

A Correct.

Q For example, to Mr. Barr and Mr. Terwilliger and Mr. Budd?

A Correct.

Q Did the copies they received contain this information or was this information contained only on copies that stayed within the Executive Office for U.S. Attorneys? Do you understand my question?

A Yes. I understand.

Mr. Fishman. For this information you are pointing at the letter at the bottom of page --

Mr. Clark. That's correct, the lower left-hand side.

The Witness. This was only on copies that stayed within our office. They did not go -- so those initials were not on the copies to Barr, Terwilliger and Budd.

DCMN QUINTERO

Q Now, was there ever a situation when the Executive Office prepared an urgent report without a U.S. Attorney sending in information?

A I suppose we could have done something over the telephone, yes. But not that I can recall.

Q So the process would have to be initiated with some communication from the U.S. Attorney; is that correct?

A Yes.

Q You are familiar with the U.S. Attorneys Manual?

A Yes.

Q There is a section in the U.S. Attorneys Manual that deals specifically with the issue of urgent reports; right?

A Yes.

Q And that contains some instructions or guidelines as to the circumstances when they have to be prepared?

A Yes.

Q And also how to go about contacting EOUSA?

A Yes.

Q Showing you now a single page document Bates stamped 007214, I would ask you just to read it to yourself.

Ms. Henneman, have you had an opportunity to read through that?

A Yes.

Q Does reading that refresh your recollection about

receiving a call from Mr. Dodson concerning this referral before it was faxed to you?

A No.

Q Does seeing this, does it refresh your recollection about speaking to Mr. McWhorter about this issue?

A No.

Q Showing you now three pages which are consecutively numbered 006664 through 006666. It's a single-page document and a two-page document. Do you recall seeing either or both of those documents in October of 1992?

A Yes.

Q Both, one, or the other?

A Both. This was attached.

Q Okay.

So you recall receiving the three pages?

A Yes.

Q And do you recall what you did with them when you received them?

A I gave them to Deborah Westbrook.

Q Do you recall any conversation with anyone from the U.S. Attorney's Office for the Eastern District of Arkansas preceding your receipt of this correspondence?

A No.

Q Now, in the second sentence, Mr. Banks writes, on page 006664, it, meaning the enclosed letter, is a follow-up

to our previously submitted summary of the above referral.

Does that suggest to you that the Eastern District submitted something other than the 21-page referral at the time it originally notified your office?

Mr. Fishman. I object to the form. If you want to ask her whether she remembers, that's fine. What it suggests to her is of no moment.

BY MR. CLARK:

Q Having read that, do you recall having received a specific document apart from the actual 21-page referral?

A No.

Q Do you recall in October of 1992 reading the enclosed letter to Mr. Pettus?

A Yes.

Q After you read it did you discuss it with anybody?

A Not that I can remember, no.

Q You merely passed along the entire package to Ms. Westbrook?

A I probably told her we had just received this from the U.S. Attorney's Office and that they had concerns about the case, but I don't recall having a conversation about this particular letter.

Q The time stamp that appears on 006664.

A Yes.

Q Who was responsible for putting that time stamp on

correspondence generally?

A Stephanie Johnson.

Q In other words, she would open up all the mail and log it in?

A Yes.

Mr. Fishman. I'm sorry. You mean log it in or stamp it in?

Mr. Clark. Stamp it in.

BY MR. CLARK:

Q Now, the next document I have for you, 006663, now, if I am reading the information in the lower left hand corner correctly, you were not involved in the preparation of this particular urgent report?

A Correct.

Q Now, do you see at the lower left-hand side the words, it looks like, send CC to Ira right away?

A Yes.

Q Do you recognize the handwriting?

A Yes.

Q Whose is that?

A Larry McWhorter.

Q Okay.

Was this an instruction to you?

A No.

Q Do you recall being told in October of 1992 by

Mr. McWhorter that -- with well, withdrawn -- do you know who Ira is?

A Yes.

Q Who is he?

A Ira Raphelson, he was in, I believe, the Deputy's Office, Deputy Attorney General's Office.

Q Do you recall being told in October of 1992 that with regard to any correspondence or communication concerning this referral you should communicate with Mr. Raphelson?

A No.

Q Going back for a second, to this letter, 006665 and 006666, when you received it and you read it, did you wonder to yourself why it was being sent to you?

A I don't recall.

Q Do you recall communicating with anybody in the U.S. Attorney's Office in Arkansas after you received this letter?

A No.

Q Showing you 006671 through 006674, it's two two-page documents. Have you had a chance to look at those two?

A Yes.

Q Do you recognize the form?

A Yes.

Q Of the top document?

A Yes.

Q Can you just identify that, please, edge?

A Memorandum for the Stuart Gerson, Acting Attorney General from the Director of the Executive Office regarding a recusal of the U.S. Attorneys in Eastern Arkansas.

Q Okay.

And as far as you know, this was a typical recusal memo?

A Yes.

Q In form, I meant?

A Yes.

Q Okay.

Now, if you go to the last two pages, 6673 and 6674, this is a letter dated January 27th of 1993, to you from Mr. Banks; is that correct?

A Yes.

Q If I look at the fourth paragraph, Mr. Banks writes: "The purpose of this letter is to clarify any possible confusion."

Do you know what he's referring to?

Mr. Fishman. Are you asking her to guess or whether she recalls independently anything in particular?

Mr. Clark. I'm asking her if she knows.

The Witness. No.

BY MR. CLARK:

Q Do you have any recollection of having a conversation with Mr. Banks or anyone else from the U.S. Attorney's Office in Little Rock immediately before receiving

this letter?

A No.

Q This letter just came out of the blue?

A Maybe someone else in the office talked with them, but I didn't, not that I can remember.

Q Well, when you received it, what did you do with it?

A I -- I assume I gave it to Deborah or Robert Marcovici who was handling the recusal.

Q Do you have a specific recollection of delivering it to Mr. Marcovici?

A No.

Q Was there a standard procedure in your office that told you that you should deliver it to him as opposed to one of the other attorneys?

A No. If we knew someone was handling the specific issue, we would -- if there was any mail that came in on it we would give it to him, but no standard procedure or anything like that.

Q Well, there were a number of attorneys in the Office of Legal Counsel at that time; correct?

A Yes.

Q Do you recall if there was any specific reason why this letter went to Mr. Marcovici as opposed to any of the other lawyers?

A Because he was handling the recusal.
Q Do you know who assigned him to do that?
A Deborah.
Q I mean, do you know that or are you just guessing?
A I assume that Deborah assigned it to him.
Q You don't recall any conversation with Ms. Westbrook in substance, the U.S. Attorney's Office that has the matter involving Mr. Clinton has asked us -- has asked to be recuse?
A No.
Q And generally speaking, you did not participate in the preparation of recusal memoranda?
A Correct.
Q I'm going to show you now a single-page document, Bates stamped JJ0468.
And I would ask you to read through the paragraphs beginning, "she called me back," down to the bottom of the page, please.
A Okay.
Q Have you had a chance to read through it?
A Yes.
Q Now, about the fourth line, Ms. Lewis writes: When I explained that it was a referral out of Madison Guaranty --
Mr. Fishman. I'm sorry, could we refer just for the record. I know you have given a document number, what the document actually is?

Mr. Clark. Certainly. This is an E-mail from Jean Lewis to Richard Iorio and Lee Ausen, dated May 19th, 1993.

Mr. Fishman. Thank you.

BY MR. CLARK:

Q The fourth line in the third paragraph, quote, "when I explained that it was a referral out of Madison Guaranty forwarded to that office by Chuck Banks, she" -- and this means you, Ms. Henneman -- "had immediate knowledge, stating, oh, the one involving the President and his wife."

Do you have any recollection of making a comment of that substance, if not in those exact words?

A Yes, I recall saying that.

Q Now, May 19th would be three-and-a-half months after the last correspondence you had seen in connection with this referral; would you agree?

A Yes.

Q Okay.

But this was something that immediately you recall?

A Yes.

Q Okay.

Now, according to Ms. Lewis, she, meaning you, then stated that the referral had been sent to that office, parentheses, actually which office is still unclear to me, close parentheses, as a report to the attention of Attorney General and not as a referral for prosecution. Do you see

that?

A Uh-huh.

Mr. Fishman. You have to say --

The Witness. Yes.

BY MR. CLARK:

Q Now, there Ms. Lewis is summarizing, really, your recounting of the fact that the first urgent report had attached to it a copy of the RTC referral; is that right?

A I'm sorry, could you repeat the question?

Q Okay.

The first referral back in October of 1992, the one that you prepared?

A Yes.

Q You can look at it?

A Yeah, I know.

Q You had a copy of the RTC referral attached to it?

A Right.

Q And it says so; is that right?

A Yes.

Q And now I'm pointing to 006641. Okay.

So that sentence that I just read, that's Ms. Lewis' interpretation of you explaining there was this urgent report prepared and it had a copy of the referral attached?

A Yes.

Q And it was sent up to the Attorney General, not for

a determination on the merits, but merely for information; right?

A Yes.

Q Okay.

Now, Ms. Lewis writes and again this is what she's writing, again, quote, "she then stated that any time a referral comes in that would make the Department look bad, or has political ramifications, it goes to the Attorney General," close quote.

Now, in substance, is that how you would explain the purpose of an urgent report?

A No. I said other things also.

Q Well, what do you recall saying?

A I told her that any time an urgent -- I mean -- I told her the reasons that urgent reports were sent in, that if it was an investigation involving a political figure or if it had political ramifications or something that the Attorney General could be asked a question on, we could get bad press on, that's when an urgent report was sent to us and we would forward it up to the Attorney General as sort of a, like a no-surprise rule.

Q So what you were describing was something that was a fairly frequent occurrence in the Department of Justice?

A Yes.

Q And there was not a unique situation?

A No.

Q Now, if you look a couple of lines below that, and towards the middle of the page, there is a sentence that says, quote, "she then stated that the referral had been declined. I advised her that the referral had not been declined and read her the letter sent to this office by U.S. Attorney Richard Pence." End of quote.

Do you recall that part of the conversation?

A I remember telling her that it had been declined and that she said it wasn't, and I, like I said, I acknowledged that I was confused in the next line and told her I would call her back.

Q Okay.

Can you remember why you were under the impression that it had been declined?

A No, I don't remember.

Q Do you recall if you were looking at any particular document when you told her that it had been declined?

A I don't remember having anything in front of me, no.

Q Okay.

As you recall it, was there any time in the conversation where you said to her, hold on a second, put the phone down, and either went to check some documents or to confer with any of your colleagues?

A I don't think I did. As it says in her E-mail, I told her I'd call her back, so I don't remember putting the phone down and going to check.

Q Okay.

But you would agree that merely the fact that you said you would call her back doesn't preclude you from at some point in the midst of the conversation saying, hold on, I'll check that?

A It could have happened, but I don't recall.

Q Okay.

But it's not beyond the realm of possibility?

A No.

Q Okay.

Now, Ms. Lewis goes on. "She," meaning you, "acknowledged that she was confused and told me she would speak with her supervisor, Deborah Westbrook and have her call me back tomorrow. I then asked for Ms. Henneman's title and she informed me that she was the ethics program manager." End of quote.

Okay. So she got your title right?

A Yeah.

Q Okay.

Do you recall stating to Ms. Lewis that you were confused?

A Yes.

Q Okay.

Do you recall whether after your conversation with Ms. Lewis you spoke with Ms. Westbrook?

A Yes.

Q What did you speak to Ms. Westbrook about?

A I asked her if she knew where the referral was or what was going on, and she said she thought Doug Frazier had it.

Q And that's -- and then in response to that you started following up on it?

A Yes.

Q Is that correct?

A Yes.

Q Okay.

Now, when you were speaking with Ms. Lewis on May 19th, you knew that this was a recusal issue; correct?

A Yes.

Q And that's why the matter was upstairs with Mr. Frazier or whomever?

A Right.

Q Correct?

A Right.

Q Okay.

At that time, meaning May of 1993, did you have an understanding of what was the time that it might take a

recusal memo to be processed up in the Deputy AG's Office?

A I -- yeah, I guess. I mean, they normally took a while to go up and make a decision and come back.

Q Do you recall in May of 1993 having the impression that this one was not that long or longer than some others? Either way.

A No. I don't think I really knew when it went up, so I didn't know that it had been, I don't know, whatever date it was it went up.

Q Okay.

Do you recall asking Ms. Westbrook if it seemed to her that it had been taking a long period of time?

A No.

Q At that time, May of 1993, was it unusual for an investigator to call your office?

A Yes.

Q Besides Ms. Lewis, in 1993, approximately how many other investigators can you remember speaking to?

A I don't remember talking to any.

Q I'm going to show you now a document marked JJ0469. It's a single-page document, memo from Jean Lewis to Mr. Iorio and Mr. Ausen, and it's dated May 26th of 1993. And I would ask you to read through the whole thing, please.

A Okay.

Q Okay.

Now, in the first paragraph, Ms. Lewis writes that she received a call from you and that in this call, which is a week after your first telephone call, that you related to Ms. Lewis that having had the opportunity to speak to Wayne Rich, you learned that the referral had been sent to Ira Raphelson. Ms. Lewis then noted that Mr. Raphelson had left the Department of Justice and was in private practice, and that you agreed that that was the case.

My first question is, do you recollect that that is how the conversation went with regard to that particular subject?

A I don't recall every conversation that I had with her. I don't dispute that that's how the conversation went, but I don't recall all the specifics of all the conversations I had with her.

Q I can fully appreciate that. I understand that this is going back two years and that, you know, you're a very busy person. You get lots of phone calls, you work on lots of matters. I am just asking you if having had the opportunity to read that, you recall it? If you don't --

A I recall parts of it.

Q Okay.

What parts do you recall?

A I remember telling her that I was going to call Criminal Division, Criminal Fraud Division of Justice. And I remember telling her that I was getting frustrated trying to

track it down. That's about it.

Q Now, you mentioned earlier the Executive Secretary?

A Yes. Secretariat.

Q Okay.

And can you just explain for the record what that is?

A It's a component in the Department that tracks all of the correspondence for the Attorney General, the Deputy Attorney General and the associate, all the letters that come and go out and what components they are in, who is handling what matters.

Q Okay.

And the reason that you called them is because they should have some sort of record as to who handled the matter at various points?

A Right.

Q Okay.

So to your understanding, there's some sort of procedure where every time it is passed along, that fact has to be communicated to the Executive Secretary?

A Yes. Any time something goes upstairs or, you know, comes down, it goes through the Executive Secretary. They have a logging number and they track where it goes and the date and all that.

Q And were you ever involved in preparing forms that were designed for the purpose of permitting that tracking

process?

A The Executive Secretary forms?

Q Yes?

A No. They are the only ones that prepare the forms.

Q Okay.

You merely transmit the documents and then they prepare that?

A Yes.

Q What, if you can remember -- withdrawn.

Was there any reason that you called Ms. Lewis even though you didn't know what had finally become of the criminal referral?

A Probably to let her know that I was still -- hadn't forgotten her and I was still checking.

Q Okay.

Do you have any recollection of having given yourself a certain period of time or some sort of particular calendar saying I should get back to her?

A No.

Q Did you call Ms. Lewis at this time at anyone else's request?

A No.

Q Okay.

This is a decision that you made?

A Yes.

Q Showing you now a single-page document, JJ0470. It's a one-page E-mail. Dated June 8, 1993, from Ms. Lewis to Mr. Iorio and Mr. Ausen?

A Okay.

Q Okay.

Have you had an opportunity to read through that?

A Uh-huh.

Q And I believe you said to us earlier that you had a conversation with a woman named Audrey Word about locating the referral within the Criminal Fraud Section?

A Yes.

Q Okay.

But having had an opportunity to look at this document, does it refresh your recollection that Ms. Word told you that some individual assigned to the referral didn't want to deal with it?

A No -- can you repeat the question?

Q Now, I'll rephrase it.

Ms. Lewis writes that you called her, quote, "it seems that Madison referral number C-0004 has reappeared on her desk. Audrey Word was successful in locating the referral within the Fraud Section of the Criminal Division and determined that the individual assigned to the referral," quote, "didn't want to deal with it. So she sent the referral and all pertinent info back to Donna Henneman for further

disposition."

A I don't remember.

What's the question?

Q My question is, do you recall whether that accurately describes what you told Ms. Lewis about the referral at that time?

A I don't remember telling her that Audrey Word said someone in Criminal didn't want to deal with it. All I remember telling her is we had found it within Criminal Division and then reading her what the gist of the memo was what the Criminal Division had decided.

Q Well, you did know that it wasn't a final decision of the Criminal Division; correct? At that time.

Mr. Fishman. Of the Criminal Division?

The Witness. I don't understand.

BY MR. CLARK:

Q You did know when you spoke to Ms. Lewis that that was not the final decision of the Deputy Attorney General's Office on the recusal issue; is that correct?

A Yes. I mean, all I knew was that Criminal Division had concluded that there was no identifiable basis for recusal of the U.S. Attorney.

Q Okay.

And you do have a recollection that you had to contact Mr. Frazier --

A Yes.
Q -- about the memo?
A Yes.
Q According to Ms. Lewis' memo, she, and this is the second paragraph, fifth line towards the right side, quote, "she," meaning you, "then told me that she had contacted Mr. Frazier who did not remember receiving the memo and suggested that she get the memo in and the referral to him for review and a final decision." Close quote.
Do you remember telling Ms. Lewis that Mr. Frazier had made such a comment to you?
A Yes.
Q Did Mr. Frazier in fact make such a comment to you?
A Yes.
Q Did you say anything to Mr. Frazier to try to jog his memory about the memo?
A I don't remember.
Q How long was your conversation with Mr. Frazier, do you remember, if it was brief?
A Brief.
Q Do you recall mentioning the fact that it involved the President?
A I don't remember.
Q Well, you had -- did you describe it in any way?
A I'm sure I had to have described it in some way for

him to remember, but I don't remember how I described it to him.

Q Now, when you spoke with Mr. Frazier, did he mention to you that he had spoken to Ms. Westbrook the day before about this?

A I don't remember.

Q I'm going to show you now 006675 through 006682. And this is a couple of documents that are consecutively numbered.

For the record, the top is a typewritten memo from Deborah Westbrook to Douglas Frazier, dated June 8th, 1993. The second page is a memorandum from John C. Keeney to Douglas Frazier with a stamped date of March 19th, 1993. The third page is captioned Department of Justice, Executive Secretariat control data sheet. And then 006678 to 006672 --

Mr. Fishman. 66812.

Mr. Clark. 6682, thank you, is a five-page memorandum from Mark MacDougal to Gerald McDowell; right?

A Yes.

Q Okay.

Now, Ms. Westbrook in her cover memo, in the very beginning writes, "pursuant to our conversation of June 7th, 1993," you don't know what conversation she is talking about?

A No.

Q When you spoke to Mr. Frazier, he didn't tell you,

you don't have to send me a copy of that, Deborah is sending me a copy of that.

Mr. Fishman. I'm sorry. Did she testify that she talked to Mr. Frazier on the 8th? I don't recall that being her testimony.

Mr. Clark. Well, I will let the question stand. She can clarify if she wants.

Mr. Fishman. That's fine.

The Witness. I'm sorry can you repeat the question?

BY MR. CLARK:

Q The question was -- can you just read it back?

[The reporter read back as requested.]

The Witness. No, I don't remember that.

BY MR. CLARK:

Q Do you remember if your conversation with Mr. Frazier was on the same day that you called Jean Lewis?

A No, I don't remember.

Q Well, is it your recollection generally that you called Ms. Lewis at about the time you learned the information that you thought she might want to know concerning the referral?

A Yes.

Q Okay.

You didn't intentionally at any point try to delay communicating to her facts that you were learning about the

progress of this matter?

A No.

Q Now, if you look at lower left-hand side of 006675. There's two -- well, on the bottom portion of the document. There are two what appear to be different handwritings; do you see that?

A Yes.

Q Do you recognize either or both?

A Both.

Q Whose handwriting do you recognize?

A The one on the left is mine and the one on the right is Dave Margolis.

Q Okay.

And can you just identify who Mr. Margolis is?

A Associate Deputy Attorney General.

Q Okay.

Now, are you talking about now or back in '93?

A Both, I mean, he still is.

Q Okay.

And by Associate Deputy, you mean he is somebody who works in the Deputy Attorney General's Office.

A Yes.

Q So it wouldn't surprise you to see his handwriting on a document sent to Doug Frazier?

A No.

Q Okay.

Now, the handwriting that you've identified as your own, can you read what you wrote?

A Per Doug 6-23, sent back to district for decision, Crim suggested declination.

Q Okay.

Do you have a recollection having seen your notes of this conversation with Mr. Frazier?

A Yes.

Q Okay.

Can you tell me what you said and what he said?

A No. I mean, I don't -- I mean, our conversations were always brief and I don't remember except for what I said there in my notes, that he said it was sent back to the district for a decision. And that Criminal had suggested declination.

Q Okay.

Is it -- do you recall if that's the order that he told it to you? In other words, send it back first and then Crim suggested declination second?

A I don't recall.

Q Okay.

A I assume that would. I wouldn't have written it backward.

Q Did you recall if you took any action with regard to

the matter after you wrote the note on this memo?

A No. I don't recall. I may have talked to Jean Lewis. I'm not sure.

Q Do you -- did you notify anybody of what Mr. Frazier told you?

A I don't remember. If I notified anyone, it would have been be Deborah or Jean Lewis.

Q Did you make any effort to contact the U.S. Attorney's Office in Little Rock at or about June 23, 1993, to communicate this decision?

A I didn't -- I didn't contact U.S. Attorney's Office to communicate the decision. The only contact I had with them was with Paula Casey to ask her to get to Jean Lewis a letter either declining or accepting the case.

Q So that was a little bit later on; is that right?

A Yeah, I believe so. I don't remember the exact date.

Q To your knowledge, did anybody in EOUSA communicate to the U.S. Attorney's Office in Little Rock this information that you received on June 23rd of 1993?

A Not to my knowledge.

Q Did you ever see any sort of cover letter sent to Little Rock with a copy of the documentation that was produced within the Department?

A No.

Q On this issue?
A No.
Q I'm going to show you two single-page documents. For the record JJ00 -- withdrawn. JJ0471 and JJ0472. And each of these is an E-mail from Jean Lewis to Mr. Iorio and Mr. Ausen.
The first is June 23, 1993 at 15:21:55. The second is same day, 15:37:30?
A Okay.
Q Okay.
Have you had an opportunity to read both of those?
A Yes.
Q Do you have a recollection of having conversations with Ms. Lewis on the subject matter that she discusses in the two?
A Yes.
Q I mean, generally speaking?
A Yes.
Q Okay.
Now, is it accurate as Ms. Lewis writes that you received the package back on your desk, and this is in JJ0471, with no further answers?
A I don't recall having -- I don't know what she means by receiving it back with no answer.
Q Okay.

Well, we just looked at the memo, 006675 and the only indication on this document of any action is your handwritten note. Would you agree with that?

A Uh-huh, yes.

Q Okay.

So I will ask you again, do you recall that when you received the package of documents on June 23rd, you couldn't tell what had been decided?

A Correct.

Q Did you find that frustrating?

A Well, I found the whole -- in trying to track this thing down frustrating, trying to find out where it was and who had it, yes.

Q Ms. Lewis writes, and this is about the seventh line down, "she had not determined" -- "she" referring to you -- "had not determined whether Mr. Frazier had taken any action prior to his departure and had spoken with her supervisor regarding her next action shortly before I contacted her."

Where Ms. Lewis writes, her supervisor, do you know who she is referring to?

A I assume its Deborah Westbrook.

Q But you're not positive?

A That was my only supervisor.

Q Okay.

If you had spoken to anyone, it would have been

Ms. Westbrook?

A Yes.

Q Okay.

Do you have a specific recollection of speaking with Ms. Westbrook about what you should do about the package that you had received without any indication of a determination?

A No.

Q Ms. Lewis writes, "she," meaning you, "then advised that this sort of thing happens all the time when we are trying to get the guys upstairs to make a decision." Do you have any recollection of making any comment along those lines, if not in those exact words?

A Yeah. She was talking about why it takes so long to track it down and there wasn't that many people upstairs at the time because there was a change in administration, and I told her it happens all the time when you try to find anything. You know, when you try to find things that have gone out of the office.

Q Okay.

When you said it happens all the time, were you referring to the particular circumstances in the period of the spring of 1993 or were you referring to your general experience within the Department?

A Probably general experience at the time.

Q Was there any part of it that was an attempt on your

part to make an excuse --

A No.

Q -- for other people?

A No.

Q Now, the second note that Ms. Lewis wrote, it's about 16 minutes later. And she writes in this E-mail that you, Ms. Henneman, called her back to let her know that you had spoken with Mr. Frazier who advised you that he met with Tony Moscato and the decision had been made to return the referral to the U.S. Attorney in the Eastern District of Little Rock. Do you recall that conversation with Mr. Frazier.

A Yeah, generally, I don't remember everything that was said, but --

Q Okay.

Do you recall if you confirmed it with Mr. Moscato?

A I don't remember confirming it. I don't think I did.

Q The second paragraph it states, "Ms. Henneman then added that she doubted whether or not the U.S. Attorney Eastern District/Arkansas would be aware of this situation yet but suggested that I wait a few days and then contact that office in Little Rock."

Do you recall if you made a comment along those lines to Ms. Lewis?

A Yes.

Q Having made that comment or something similar to it to Ms. Lewis, how was the information going to be communicated to the U.S. Attorneys Office in Arkansas, to your understanding?

A The package was being sent to the U.S. Attorney's Office.

Q Okay.

You had an understanding when you spoke to Ms. Lewis that that was going to happen?

A Well, I was told by Doug Frazier that it was sent back to the U.S. Attorney's Office, so I told her give that office a couple of days to look at it and give them a call.

Q Okay.

Do you have a specific recollection that Mr. Frazier said the matter had been communicated to Little Rock or did he say we are going to just send it back?

A I don't have a specific recollection.

Q And you don't have a recollection that the responsibility lie with your office to communicate with the U.S. Attorney's Office in Little Rock the decision by the Criminal Division?

A No.

Q At the time Mr. Frazier was in Florida?

A Yes.

Q And you don't recall volunteering to communicate the decision of the Department to Little Rock?

A I didn't do that.

Q Okay.

Do you recall wondering how it was going to be done?

A No.

Q I'm going to show you next JJ0474. Actually, I will show you three together. JJ0474, JJ0475 and JJ0476. Each is a single page E-mail. Each of them written from Jean Lewis to Richard Iorio and Lee Ausen.

The first is dated September 23, 1993, the second is dated September 29, 1993 at 12:16:43. The third is dated September 29, 1993 at 16:22:55 and you can take your time.

I would please ask you to read through the text of each of them.

[Recess.]

BY MR. CLARK:

Q Have you had an opportunity to read them or would you like some more time?

A I would like some more time.

Q Okay.

A Okay.

Q Now, there are a couple of matters that are raised in these three documents, but one thing that -- one issue that is brought up is Ms. Lewis communicates that there are going

to be some more referrals and the issue is does the Executive Office for U.S. Attorneys want copies of the referrals or just some summary or just cover letters? Is that a fair way of characterizing the issue generally?

A Yes.

Q Now, do you remember that being an issue at some point?

A Yes. I remember her calling and saying that she had additional referral that they was going to send and she was afraid they were going to receive the same treatment, and I told her to send copies not of everything that they had because I think she wanted to send boxes of things, you know, with all the investigative --

Q Exhibits?

A Yeah, and everything. And I told her we didn't need that, just to send us copies of the cover letters, and I believe there were some summaries.

Q Okay.

And what was your purpose in asking for any of this information or did you have one?

A To ease her mind, basically.

Q Okay.

In that regard, did you communicate any to her on the point, why you would take this information from her?

A Just to make sure that the -- that she -- the

referrals did not receive the same treatment as the other ones. She was concerned and we said would take copies of them and if there were any copies we could contact the U.S. Attorney's Office directly.

Q Okay.

Do you recall that you had more than one conversation with Ms. Lewis on this issue?

A Yes, I believe so.

Q Okay.

Now, if you look at JJ0475, this is the first of the two E-mails on September 29th. Ms. Lewis writes that she's received a call from you. And Ms. Lewis writes, "she," meaning you, Ms. Henneman, "Advised that she had spoken to her supervisor, Deb Westbrook and Ms. Westbrook's supervisor Doug Frazier regarding whether or not the Executive Office wanted copies of the Madison referrals slated for submission this week. Ms. Westbrook and Mr. Frazier have determined that the Executive Office should receive copies of the referrals and exhibits." End of quote. Do you see that?

A Uh-huh. Yes.

Q Do you recall a meeting with Ms. Westbrook and Mr. Frazier on this subject?

A No. I remember talking to Deborah about it. I don't remember a meeting. I don't know if Deborah talked to Doug separately. I remember telling Deborah that Jean wanted

to send copies of everything in to us.

Q You told that to Deborah --

A Yes.

Q -- Westbrook?

A Yes.

Q How did you learn that the -- your office should get copies of the referrals and exhibits?

Mr. Fishman. What do you mean by should?

BY MR. CLARK:

Q This memo reflects, quote, "The Executive Office should receive copies of the referrals and exhibits," close quote. Do you recall --

A No, I don't think it was quite this way. I think -- like I said, she expressed her concern about the referrals and she wanted to send us copies to make sure that, you know, if there was a problem down the road that we would contact the U.S. Attorney's Office. I told her that was fine and I told Deborah what she wanted to do, to send us copies, and basically, like I say, we were doing it to ease Jean's mind.

At this point we had had umpteen conversations with her and she -- we had finally got the whole situation resolved with the original referral and now she wanted us to get involved in additional referrals, and we don't normally get involved in those things, and to, you know, ease her mind and to get this off of our plates we were just going to tell her

to send us copies and if there were any problems to call us back.

Q So you have no information about why Ms. Lewis included Doug Frazier in her discussion of your conversation?

A I may have said -- I may have talked to Deborah and Deborah told me she had talked to Doug and told her to send it in. I don't remember. I just remember Jean wanting to send everything, talking to Deborah and Deborah telling me to tell Jean to send us copies of the cover letter and the summaries, that we didn't need boxes and boxes of documents.

Q Okay.

Now, the two documents JJ0475 and 476, they reflect phone calls approximately four hours apart. Do you have a recollection that you called Ms. Lewis and communicated certain information to her regarding what she should do and then called her later to say, no, what I told you earlier, we're going to do something different?

A Yeah. I think the first time I talked to her she said she was going to send the referrals along with all of the documents that she had, the exhibits. And I told her, okay. When I talked to Deborah, Deborah said we don't need all of that, there is no reason for us to have them, call her back and tell her just to send the summaries.

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BY MR. CLARK:

Q Now, in JJ0475, Ms. Lewis further writes, "Upon receipt they will review them" -- meaning the referrals -- "and determine whether to instruct the U.S. Attorney's Office to act on them accordingly or if they should be forwarded to the Public Integrity Section of DOJ for further review."

Do you recall mentioning the Public Integrity Section in any of your conversations with Ms. Lewis about the new referrals?

A No, I don't recall saying that.

Q Do you recall having any conversation with Ms. Westbrook about what the Executive Office for U.S. Attorneys should do once you got copies of any documents from Ms. Lewis about these new referrals?

A I remember telling -- you mean Deborah telling me -- discussing it with Deborah and deciding that we would let her send them in to us, or we would have her send them in to ease her mind. Like I said, I don't remember anything more than that.

Q Do you recall Ms. Lewis asking you about the nature of the Public Integrity Section?

A No.

Q Do you have any recollection of telling Ms. Lewis

that the Public Integrity Section is the section of the Department of Justice responsible for the prosecution of public officials?

A No.

Q Would you agree that that is a very general but fair description of the area of responsibility for the Public Integrity Section?

A Yes.

Q Ms. Lewis writes, "Miss Henneman also advised that they have made the decision to get the Deputy Attorney General's Office involved in this situation and bring them up to speed."

Did you speak with Ms. Lewis on the subject of the Deputy Attorney General's Office?

A I don't recall.

Q Now, you worked with Ms. Westbrook. As I understand it, your office was right outside of her office?

A Uh-huh, yes.

Q Did you take care of keeping any schedule for her?

A Well, not really. She kept her own appointment book, but, I mean, from time to time if she would ask me to write things in there or check things, but she pretty much kept her own book.

Q Okay.

The appointment book for 1993, do you know if it still

exists -- yours?

A My appointment book or Deborah's?

Q Did you have one in 1993?

A No.

Q Okay.

If you would write appointments for Ms. Westbrook, would you keep them in any sort of organized information system?

A She had an appointment book; you would write them in there, or I would write them on the little desk calendars.

Q Okay.

The desk calendars that you have, was it on your desk or her desk?

A Mine.

Q Okay.

Do you know if you have kept your 1993 desk calendar?

A No. I threw it away.

Q You threw it away?

A Uh-huh.

Q Okay.

If you look at JJ0476, in the first paragraph Ms. Lewis writes, "I have received a follow-up call from Donna Henneman. She" -- meaning you, Miss Henneman -- "spoke with her supervisor Deb Westbrook regarding my request for a written follow-up to her verbal request that the Executive Office be copied on all the Madison referrals and exhibits.

Ms. Westbrook has withdrawn her initial request for copies and stated that they will go through the U.S. Attorney's Office to obtain copies rather than having us copy their office directly. Miss Henneman indicated that this route would not make the U.S. Attorney's Office feel as though the Executive Office was going behind their back in requesting copies of the referrals."

Do you recall any conversation with Ms. Lewis that is similar in substance to what she wrote there?

A Yes.

Q So this was a second conversation that you had with Ms. Lewis about these referrals?

A Yes.

Q Okay.

Then in the second paragraph Ms. Lewis writes, "She then reiterated that she would like" -- and this is referring to you -- "to be copied on the transmittal letters that will be sent with the referrals to the U.S. attorney and the FBI with a brief summary paragraph outlining the suspects and contents of each referral."

Do you recall saying something in substance along those lines to Ms. Lewis?

A Yes.

Q As I understand it, your intent really was to provide her some comfort that somebody was attending to this?

A Yes.

Q Was there any effort on the part of the Executive Office for U.S. Attorneys to communicate this information about the referrals to the U.S. Attorney's Office in Little Rock?

A Told Paula Casey that she was sending additional ones.

Q Okay.

And that was the intent all along. Is that correct?

A Yes.

Q Now, at the time of these phone calls, do you recall if Ms. Casey was already in office in Little Rock?

A Yes, she was.

Q Okay.

So it wasn't the case that you were collecting this information to wait for Ms. Casey to arrive in Little Rock. Is that right?

A No. She was already the U.S. attorney, because she had already sent the letter to Jean on the original case. This came after that, after the --

Q That is how you remember it, that this --

A Uh-huh.

Q Okay.

Go back to JJ0474. If you look at the third full paragraph -- and I realize it is cut off on the left side --

"She" -- meaning you, Miss Henneman -- "then asked me about the final disposition of MGS&L referral C004. I told her that I had been advised that it was received back in the U.S. Attorney's Office but that I had received no formal notification that a case had been opened nor a declination letter."

Do you recall any discussion with Ms. Lewis along those lines?

A That is when she told me that the same thing -- she was concerned that the same thing would happen to the new referrals, yes.

Q Okay.

But according to this memo, at this point in time she had not gotten Ms. Casey's letter on the first referral?

A Right, according -- yeah.

Q Okay.

Does that refresh your recollection on the sequence of events here with regard to when Ms. Casey declined on the first referral and when you were discussing these new referrals?

A I talked to -- I mean I know I talked to Paula about the original referral and asked her to get a letter to Paula. She said she would -- I mean to Jean, I am sorry. She said she would review it and send Jean a letter. I believe it was after that that Jean called me and told me that she was

sending more and was concerned that the same thing would happen, so that is when we told her to send these.

Q I am going to show you now a stack of documents Bates stamped. Number 005083 is the first page; the last page is 005130. To my eye, without having checked them carefully, the pages in between are consecutively numbered. The front page is a letter dated October 13, 1993, addressed to Ms. Donna Henneman from Jean Lewis.

Do you recognize that stack of documents?

A Yes, I do. Yes.

Q Okay.

Now, that is the information that Ms. Lewis provided to you after you had the series of conversations about whether you should get any and, if so, how much information from her. Okay.

So -- and let me show you this. It is a two-page document, 006767 and 006768. Now, the latter document, have you seen -- do you recall seeing that in or about November of 1993?

A Yes.

Q Okay.

And that is the actual letter that Ms. Casey wrote to Ms. Lewis saying, "I am declining to take further substantive action on this referral," referring to the first one; right?

A Right. Yes.

Q Okay. So you would agree then that you received the information about the second referrals before Ms. Casey actually sent the letter regarding the first referral?

A Yes.

Q Okay.

A But I had talked to Paula about this I think before she sent this second set of referrals. She told me she was going to review it and send a letter. So I assumed it would have taken some time for her to review all the documents and send a letter.

Q Okay.

It is your recollection that before you received the second, the information concerning the second set of referrals, that you had spoken to Ms. Casey on the subject of acting upon the first referral?

A Yes.

Q Do you have any recollection whether it was a day before you received the information about the second set of referrals, whether it was a week before, a month before?

A I have no idea.

Q And when you received the information about the second set of referrals, what did you do with it?

A Put it with the rest of the documents.

Q The rest of what documents?

A All the documents that I had accumulated throughout

the time speaking with Jean Lewis.

Q You had --

A I had a stack.

Q You made a little Jean Lewis file?

A Not a Jean Lewis file, but a file with the recusals and urgent reports and everything that we had done on this matter, and filed it in the Eastern District of Arkansas file.

Q Okay.

And did you include in that file memoranda memorializing any of your conversations with Ms. Lewis?

A No.

Q Did you take any handwritten notes that you might have ripped off and shoved into the file jacket that you had created?

A There were a couple of notes. I know there was one handwritten note.

Q Okay.

Was it your general practice to make handwritten notes of your conversations with people from outside the Executive Office for U.S. Attorneys?

A When I give ethics advice, yeah, I know all that; but something like this I wouldn't, no.

Q And Ms. Westbrook never advised you that if you were going to be communicating with Ms. Lewis regularly you should make some sort of note?

A No.

Q Now, showing you -- withdrawn. Were you aware that Ms. Westbrook consulted with Ms. Casey regarding whether she should recuse herself in this matter?

A Yes.

Q And how did you become aware of that?

A She told me that she had talked to her about the recusal at a conference that they were at together when we had to put the chronology.

Q Okay.

When you were making the chronology, that was the first time that you knew that Ms. Westbrook had consulted with Ms. Casey on the issue of recusal?

A That I can remember, yes.

Q Okay.

What can you recall Ms. Westbrook telling you about her conversations with Ms. Casey?

A She was just trying to remember when she had talked with her and remember that she had talked to her at I think it was an orientation for new U.S. attorneys, and asked me to find out when it was, because that was the date that she talked to her.

Q Okay.

What did you do to find out that information?

A Just found out the date of the conference. I think

it was probably in her calendar book.

Q Okay.

Now Ms. Casey, as I understand, was at a regular orientation program that is something that is ordinarily done and it is part of the mission of your office. Is that correct?

A Well, the Executive Office hosted it for all the new U.S. Attorneys coming on board.

Q Yeah, sort of give them an idea of what pitfalls they should avoid and how they could communicate with the Executive Office to communicate with other parts of the Department of Justice, right?

A Yes.

Q All right. I am going to show you JJ0478, which is a single-page memo from Jean Lewis to Richard Iorio and Lee Ausen dated October 27, 1993; and just read that to yourself, please.

A Okay.

Q Do you recall having a conversation with Ms. Lewis in which you asked her about receiving the declination and she told you she hadn't?

A Yes.

Q Do you recall if you called Ms. Lewis the day that you learned that this letter would be sent or if you waited some time before calling her?

A I don't remember.

Q Ms. Lewis writes -- and this is in the fourth line down towards the right -- "She" -- meaning you -- "then advised that her supervisor Deb Westbrook had evidently had a conversation with U.S. Attorney Paula Casey and that Ms. Casey stated that she would be sending a declination letter to the RTC on that particular referral."

Do you recall in substance communicating to Ms. Lewis that you were relating what Ms. Westbrook had told you?

A No. I mean, I remember telling her that a letter will be coming, but I don't remember having a conversation with Deborah.

Q You think this may have been based on a conversation that you had with Ms. Casey?

A No. I don't dispute that Jean is right. It was probably based on a conversation I had with Deborah.

Q But you are just not sure?

A I remember the conversation with Paula, and I don't remember her telling me that she was sending a letter. I remember her telling me she would look into it and she would get a letter to her, but I don't remember her telling me that she was sending it. So the only other person that would have known would have been Deborah.

Q Okay.

Then in the second paragraph Ms. Lewis writes Donna also

noted that Ms. Westbrook advised her that USA Casey had stated that she would "deal" with the other referrals as well. Do you have a recollection of saying anything similar to that in substance, if not those exact words?

A I remember telling her that, yes.

Q And when you say you can remember telling her that, do you mean in substance, or can you remember your exact words?

A In substance.

Q I am going to show you one page. It is, for the record, 006788. Do you recognize the handwriting on that page?

A No, I don't.

Q For the record, this is a photocopy of what appears to be a page of handwritten notes that came from some sort of a spiral notebook. If you notice towards the bottom, Ms. Henneman, there is the date 11/2 and to the right of that the name Gerald McDowell. Do you know Mr. McDowell?

A No, not personally. I have heard his name before.

Q Okay.

The name that you have heard is, to your understanding, an employee of the Department of Justice?

A Yes.

Q Okay.

Underneath the name there appears (202) 514-7023. 514 is

the prefix for the Department of Justice, right?

A Yes.

Q Now, underneath that it appears to say, okay, RE RTC, and if you look at the -- there are a couple of dashed lines toward the left. In the fourth one down it appears to be, "Told him of Henneman contacts by L. Jean Lewis." Do you see that?

A Yes.

Q Having seen that, does that refresh your recollection that in early November of 1992 somebody was asking you about your communications with Jean Lewis?

A No.

Q If you look two down there is another dash, and it appears to say -- and I am not attributing this to you -- "We will get RTC referrals to Henneman."

Do you see that?

A Yes.

Q Can you recall any conversation with anyone outside the Executive --

Mr. Fishman. Could you read that again?

Mr. Clark. You want me to read it?

Mr. Fishman. Yes. I wasn't paying attention.

BY MR. CLARK:

Q We will get RTC referrals too -- T-O-O -- to Henneman.

Mr. Fishman. I am not sure whether it is "from" or "to." I am not sure you are reading it accurately. That is the question.

Mr. Clark. Fine.

Mr. Fishman. I am also not sure whether it is "he" or "we." I am not quarreling with the good faith of the question, I am just honestly not sure.

Mr. Clark. Okay.

I am saying I am not attributing this to the witness.

Mr. Fishman. I understand that.

BY MR. CLARK:

Q My question, Ms. Henneman: Did anyone outside the Executive Office for U.S. Attorneys in or about November of 1993 speak to you about obtaining either the summaries of the RTC referrals or the entire RTC referrals?

A No, but can I -- I gave them to Louis DeFalaise -- I am not sure when that was -- to comply with whatever request it was to turn over all documents. But that is the only person that I ever turned any documents over to.

Q When you provided the documents to Mr. DeFalaise, you have spoken earlier about how you had a file regarding this. Did you turn over the whole file, or did you go through it and pick out certain documents?

A No. I turned over everything we had; made copies and turned over everything we had.

Q Okay.

Was the chronology provided at the same time, or was it handed over separately, if you remember?

A I remember there being two requests. I believe the first time it was for just documents, and the second time I believe that -- I believe they wanted a chronology. I could be wrong, but I remember -- I mean throughout the time we have been receiving --

Mr. Fishman. I am going to stop for one second, because I am not sure at this point. Given the fact that the witness doesn't remember exactly what the timing is, I am sort of reluctant to explore a request made by various other investigative bodies.

Mr. Clark. I understand counsel's concern.

BY MR. CLARK:

Q I believe your testimony -- and correct me if I am wrong -- that some period of time after these events but not in conjunction with any investigation by special counsel or independent counsel that Mr. DeFalaise had made a request for the chronology?

A Yes.

Q Now, you are handing over the documents to Mr. DeFalaise. Was it in connection with that, the creation of that chronology?

A I don't understand the question. Was what in

connection with it?

Q When you handed over these documents that you had in the file to Mr. DeFalaise, that is what you did, right?

A I understand it. Was the chronology in connection with the documents?

Q Did you hand over documents to him in connection with giving him the chronology?

A Yes.

Q Okay.

Do you remember what you did first?

A The documents or the chronology; is that what you are asking?

Q Yes.

A I believe that we give him the documents first and then he came back and asked us for a chronology.

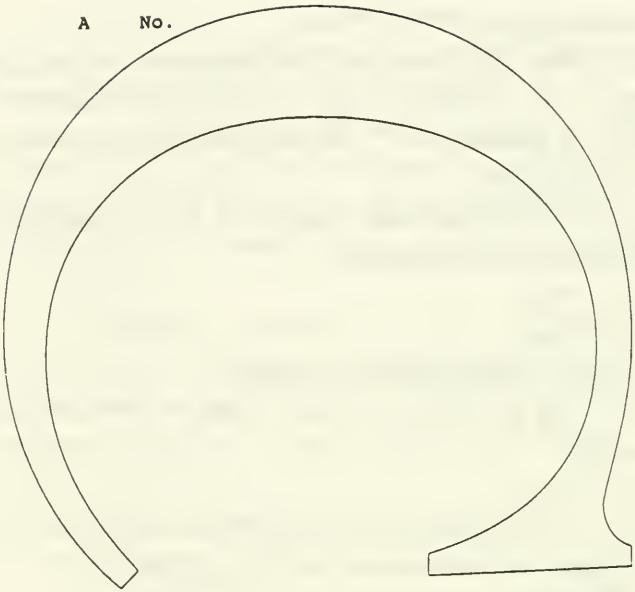
Q Okay.

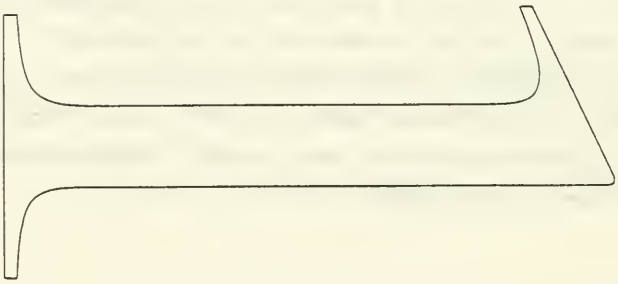
Now, before you said something like they were asking, and sometimes you say he, sometimes you say they. Were you using "they" because you are referring to anybody in particular?

A I believe it came from the Hill, the request came from the Hill, and Lou was asked to get the documents.

Q I am going to show you a single-page document. It is 016726. It is a letter dated December 2, 1993. From Paula Casey to the Honorable Susan Weber Wright. Have you ever seen that before, Ms. Henneman?

A No.





DCMN QUINTERO

Q Now, in that letter, if I can try to summarize it, Ms. Casey is notifying the judge of the fact of her recusal, and she refers to a specific section of the U.S. Attorneys Manual that the notification is being made pursuant to; is that fair?

A Yes.

Q Okay.

Do you have any recollection of communicating with Ms. Casey that she ought to do this?

A No.

Q Do you know if anyone within the Executive Office for U.S. Attorneys had any communication with Ms. Casey telling her that she should do this?

A No.

Q Was there some sort of checklist that your office maintained, to your knowledge, in recusal situations of the various notifications that had to be made and the various forms that had to be filled out?

A Not a written checklist, no.

Q Okay.

So, for instance, months later you wouldn't be able to go back and find out whether the Chief of the General Litigation and Legal Advice Section had been advised of a recusal?

A We could find out by going to the file and pulling

the file because we should have copies of any letters that were sent out.

Q Okay.

So that was your control mechanism, you kept copies of all the documents, you didn't have like a single summary checklist that somebody could just look at very quickly?

A Correct.

Q Okay.

As far as you know, everybody was very good about keeping copies of their documents?

A Yes.

Q I am going to show you now a group of documents and I am going to have to read the Bates numbers because these are not consecutively numbered, so if you will bear with me, and I have copies of them: 006594, 006595, 006597, 006598, 006617, 006634, 006635, 006636, 006637, 006638, 006640. Have you had a chance to look through those?

A Yes.

Q Now, many of the pages that I have handed you are photocopies of some of the, maybe all of the E-mails that Jean Lewis' wrote that we have already discussed. Would you agree?

A Yes.

Q But also included in here is, for instance, 006597 and 006598 on 6597. At the top, there is a heading statement of the Honorable James A. Leach, Index of supporting documents

Madison Guaranty Savings and Loan, March 24, 1994, and then there is a list of documents. Do you see that?

A Yes.

Q My question, Ms. Henneman, is do you recall in or around the end of March of 1994, possibly April, anyone showing you these documents, anyone from the Department of Justice showing you these documents and asking you to comment on them?

Mr. Fishman. Could we go off the record a second?

[Discussion off the record.]

Mr. Clark. Can we go back on?

Mr. Fishman. Yes.

I appreciate your conversation, Mr. Clark. I have had an opportunity to determine the circumstances under which the witness discussed these documents, and I have no objection to your asking any questions about them at this point.

Mr. Clark. Thanks.

BY MR. CLARK:

Q Ms. Henneman, do you recall the question, then, I posed to you?

A Could you please repeat it?

Mr. Clark. Can the reporter read it back?

[The reporter read back as requested.]

The Witness. No, I was given the documents, but I wasn't asked to comment.

BY MR. CLARK:

Q Okay.

Who provided the documents to you?

A Deborah Westbrook had them. I believe she got them from Lou DeFalaise.

Q And can you give me a sequence in connection with the production of the chronology and the turnover of the file to Mr. DeFalaise and these documents?

Do you understand my question?

A Were these documents given to me before or after I turned the documents over to Mr. DeFalaise?

Q That is correct.

A I don't remember.

Q Do you recall if Ms. Westbrook had any -- withdrawn. What did Ms. Westbrook say to you when she gave you these documents?

A She just told me that they were Jean Lewis' renditions of our conversations and asked me to look at -- I mean, she gave them to me to look at.

Q You had already provided the chronology, correct, so these were not given to you to help you to assemble the chronology; is that right?

A I did not use these to assemble the chronology, no.

Q Did you take the opportunity to read through the documents when you received them from Ms. Westbrook?

A Yes.
Q Did you speak to her after you had the opportunity to review them?
A Yes.
Q What did you say to her?
A That I didn't remember saying everything that Jean Lewis said in here, and that was basically it.
Q A brief conversation?
A Yeah.
Q Was it only Ms. Westbrook or was there anybody else within the Executive Office that you discussed these with?
A Just Ms. Westbrook.
Q To your knowledge, was Ms. Westbrook communicating your conversations about these documents with anyone in the Office of the Deputy Attorney General at about that time?
A Was she?
Q To your knowledge?
A No, not to my knowledge.
Q To your knowledge, was she communicating with John Keeney at about that time about your comments on these documents?
A Not to my knowledge.
Q To your knowledge, was she communicating with Gerald McDowell on that same subject?
A Not to my knowledge.

Q How about Donald MacKay?

A Not to my knowledge.

Q To your knowledge, was she communicating with anyone from the White House staff about your comments on these documents?

A Not to my knowledge.

Q Were you subject to any sort of disciplinary action in or about April or March of 1994, as a result of these communications?

A No.

Mr. Fishman. Mr. Clark, before you put the documents away, because they were produced out of -- I just don't know the answer to this, were these documents, it says, statement of the Honorable James A. Leach, were these documents you just questioned her about made a part of the House, the Congressional Record by Chairman Leach?

Mr. Clark. That is my understanding. If you look at 006597 and 98, for example, someone has highlighted Donna Henneman's name next to particular numbered documents.

Mr. Fishman. Okay. I see that.

I am just questioning whether these --

Mr. Clark. And, for instance, the numbers that appear in circles on the copies of the E-mails themselves, it is my understanding that those circled numbers correspond to the numbers that are on the index.

Mr. Fishman. It would appear to be so. I am just asking for clarification whether they were made a part of the -- I mean, somehow made part of the Congressional Record on the day --

Mr. Clark. Yes, that is my understanding. Yes, they were in the public domain, yes.

Mr. Fishman. I was just curious.

BY MR. CLARK:

Q Ms. Henneman, the copies that you saw as opposed to the copies that I have, did they have your name highlighted, do you recall?

A No. I think I did it.

Q You think that you did?

A Yeah, because I think Deborah asked me to highlight where my name was, so that is what I did because she wanted to read, she read it also. I think hers is highlighted also. Maybe not.

Q In a couple of instances, for instance, if you look at 006617, it is hard to read, but I do believe that --

A That is Deb Westbrook. I think she asked me to highlight where both of ours were.

Q Showing you now 006584 and 85, do you recognize that two-page document?

A Yes, I do.

Q And that is the chronology that we have spoken some

about?

A Yes.

Q Now, in preparing this, you tried to be as comprehensive as you could be; am I correct?

A Yes.

Q Your task was to give a complete chronology as best you could remember?

A Yes.

Q And so, for instance, some things have specific days and some just have month and year because you couldn't really remember the particular days?

A Correct.

Q Okay.

Now, you look towards the middle of 6584, see an entry 6-23-93?

A Yes.

Q Spoke with Doug Frazier?

A Yes.

Q Now, immediately above that there is an entry that has no date next to it, spoke with Jean Lewis on several occasions between May and September, and then above that there is an entry for 3-19-93, what I am not seeing here is any entry indicating that on June 8th the memo was sent back to Doug Frazier. Do you see that entry anywhere?

A No.

Q Do you have a recollection of as you were preparing this consciously deciding not to include that?

A No.

Q Do you recall discussing it with Ms. Westbrook?

A No.

Q When you were preparing this did you refer to the file of documents that you had?

A Yes.

Q And was there a copy of Mr. -- the memo to Mr. Frazier?

A Yes.

Q And, in fact, that would be the only way that you would have gotten the date for June 23rd; isn't that correct?

A Yes.

Q To your knowledge, the entry for June 8th was never included in this?

A Correct.

Q Okay.

It never was as far as you know?

A No.

Q Okay.

A I prepared this.

Q Okay.

Is there a reason why you didn't put a date on this?

A No, no reason.

Q Were you given any instructions as to the format or the means of identifying this?

A No. They just wanted, Lou asked for a chronology and a list of all the documents that we had.

Q Okay.

And this was not a form or type of document that you regularly prepared, correct?

A No.

Q For instance, it wasn't like the urgent reports that we have seen before where you have a specific format?

A Correct. I just did this myself.

Q Did it occur to you at the time that somebody looking at it would not have an idea who prepared it or when it was prepared?

A No, it didn't.

Q Now, a couple of these entries it doesn't indicate between you and Ms. Westbrook who took the action, now on the first page, 6-5-84 spoke with Jean Lewis on several occasions. That refers solely to you?

A Yes.

Q To your knowledge, Ms. Westbrook never spoke directly to Ms. Lewis?

A To my knowledge, yes.

Q Okay.

Did you and Ms. Westbrook ever discuss whether she should

speak directly to Ms. Lewis?

A No.

Q Did Ms. Westbrook ever tell you affirmatively that she did not wish to speak with Ms. Lewis?

A No.

Q So the 6-23-93 entry, that refers to you again?

A Yes.

Q And 10-93 spoke with Jean Lewis, et cetera, that again is your entry?

A Yes.

Q Now, the next entry, 10-93, spoke with USA Paula Casey and advised of alleged problems Jean Lewis was having with former USA, and then there is some more there. Is that both you and Ms. Westbrook?

A Yes.

Q I am going to show you three pages, each of which is a single page of handwritten notes, and they are Bate stamped No. 006586, 006587 and 006588, and I am not saying that they are all from the same source. I don't know that. So just look at them and then I want you to tell me if you recognize the handwriting on any of them?

A Yes, I do.

Q Okay.

Can you tell me which page or pages you recognize the handwriting on?

A All three of them.
Q Okay.
So 6586, is there one handwriting or more than one?
A One. It is mine.
Q Okay.
Can you just read for me everything that you see on what appears to be a Post It, a photocopy of a Post It?
A Exec Sec, McDougal, Fraud Section, Jean Lewis, February '93, a telephone number, Eastern District of Arkansas, Lee Ausen, and another telephone number.
Q Okay.
And each of the telephone numbers has the same area code 816?
A Yes.
Q Okay.
To your understanding, that is Arkansas?
A No, I believe that Jean Lewis was out of Kansas City.
Q Kansas City?
A Yes, Missouri.
Q Exec Sec, what does that refer to, that is a little bit of shorthand?
A Executive Secretary.
Q McDougal, what does that refer to?
A I believe that was who the referral was about, the

original referral, one of the names in the original referral.

Q Okay.

And does it look like M-C-D-O-O-G-L-E?

A Yes.

Q Now, do you know what this Post It was attached to?

A The file. I don't think it was attached to a specific document.

Q 0066587, which appears to be another Post It?

A That is mine.

Q That is your printing?

A Yes, everything there is my handwriting.

Q Okay.

Can you read into the record everything that you wrote on this Post It.

A Crim, Keeney, February '93, no action through Doug to AGX 93021101532, USAO should handle to Doug March 19th, Alberta.

Q What is the reference to Alberta?

A It may have been who I spoke to in Exec Sec, I am not sure.

Q It could have been a secretary?

A Yes.

Q And the entry to Doug March 19th, do you recall what that refers to?

A I took this information or this note when I was

talking to the Executive Secretary when they tracked down the correspondence I was looking for. That was the Executive Secretary number, the one that starts with X, and she was just telling me what she had on her Executive Secretary screen as to where the action was. They went to Criminal Division, Keeney, no action, through Doug, and that is all the information that she had on her computer.

Q And you don't know the date that you prepared this, do you?

A It was early in my conversations with Jean, because it was when I finally tracked it down that it was in the Criminal Division.

Q Okay.

Do you know what the phrase "no action" what that relates to or what that means?

A No. Apparently Criminal was taking no action on it. I don't know.

Q And then the number beginning with what appears to be the letter X, that is the control number that you spoke about before for documents that go through the Executive Secretary?

A Yes.

Q Okay.

Now, on the third page 006588, it appears that there are two different types of handwriting. Would you agree with

that?

A Yes.

Q Do you recognize both?

A Yes.

Q Okay.

The handwriting that is darker and on top, whose is that?

A Deborah Westbrook's.

Q Okay.

And then the handwriting underneath that appears to be Jean Lewis and then some additional information?

A Mine.

Q Okay.

And do you know the circumstances under which you created this?

A No, I don't know why Deborah -- I don't know who Deborah was talking to or how she took the notes. I remember just taking -- that is Jean Lewis' name and address.

Q Okay.

You didn't keep, for example, a spiral notebook that Ms. Westbrook may have written in?

A No. Deborah had the spiral notebook.

Q Okay.

Just give me one second, please. I just need to look at a couple of things.

Ms. Henneman, we talked some about the time stamp that

Ms. Johnson in your office had. Now, was there one for the Executive Office and a separate one for the Office of Legal Counsel?

A Yes. I believe each section in the Executive Office probably has their own. There is one general, one for all incoming mail that comes in to the Executive Office and then each section has their own.

Q Okay.

So, for example, I am showing you 005136, it is a copy of a letter from Ms. Casey to Mr. Heymann, November 5th, and what I am directing your attention to particularly is what appears to be a portion of a time stamp towards the right side, and I know it is incomplete. My question is, does it look similar to any time stamp that you are familiar with within the Executive Office for U.S. Attorneys?

A They are all the same. They just have different sayings.

Q Well, for example, 007039 has a time stamp from your office, and it has up top EOUSA received, and then it has the time, and then Office of Legal Counsel underneath?

A Yes.

Q That one it appears to me it has the information about the date and time and then underneath it some further information. You just don't know?

A I just don't know who that is from, where it is

from.

Q Okay.

Finally, just a couple more questions.

Mr. Fishman. To assist you, by the way, the letters that appear at the bottom of the page, GEM, I believe, means that this particular copy of the document that you are showing the witness from McDowell's file, I believe.

Mr. Clark. That is what I figured. I appreciate it.

BY MR. CLARK:

Q Ms. Henneman, during the time that you were dealing with Ms. Lewis --

Mr. Fishman. Let me, for clarification, Mr. Sgro points out that the date time stamp on 005136 may not be, just has the word "Executive," it may be the Executive Secretariat time stamp and may not be EOUSA at all, so I don't want you misled by the witness' answer. It may not be an Executive Office of Attorneys date time stamp.

Mr. Clark. I understood that she didn't know if it was.

Mr. Fishman. Just for purposes of clarification, we think it may be Exec Sec.

Mr. Clark. I was going to make a request afterwards that you try to confirm that for me.

Mr. Fishman. Sure.

The Witness. It probably is because it was addressed to the DAG.

BY MR. CLARK:

Q Ms. Henneman, in your communications with Ms. Lewis, they were fairly cordial, correct?

A Yes.

Q And to your knowledge, there never was a time when you and Ms. Lewis had any argument or exchange where one or the other made accusations against the other?

A No.

Q Okay.

And so you are aware of no reason why Ms. Lewis would harbor you any ill will?

A No.

Q Okay.

In getting ready for your appearance here today -- withdrawn.

Before appearing here today have you spoken with either Mr. Moscato or Ms. Westbrook about their experience testifying in this matter?

A No.

Q Okay.

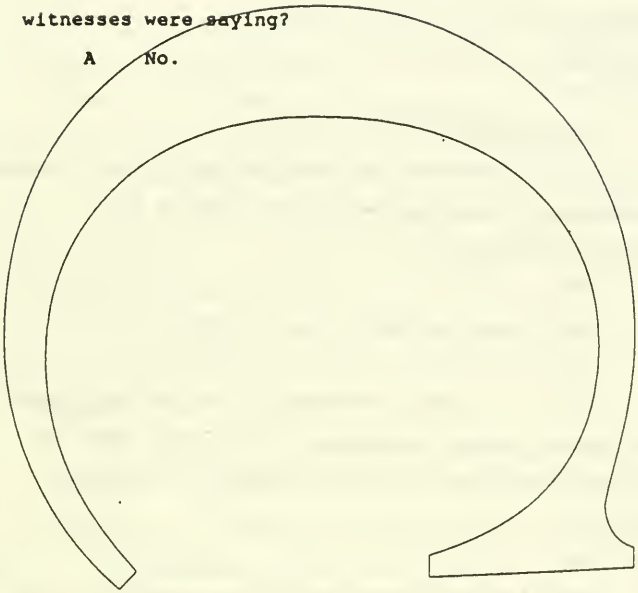
And other than attorneys representing the Department of Justice, have you spoken with any attorneys from the White House before you came here today about this matter?

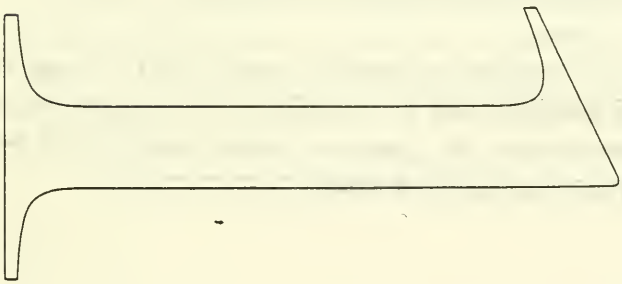
A No.

Q Has anybody told you the substance of what other

witnesses were saying?

A No.





RPTS WHALEN
DCMN QUINTERO
[4:45 p.m.]

BY MR. CLARK:

Q Did anybody tell you that you should try to portray any individual in a particularly good light or in a particularly bad light?

A No.

Q You understand what I mean by that?

A Yes.

Q When on or about September 23 of 1993, Ms. Lewis and you spoke about the new referrals and Ms. Lewis said she didn't have a decision on the first referral, did that surprise you?

A No.

Q The fact that three months had elapsed since you had gotten a decision from Frazier?

A Well, I knew it had just been sent back to Paula Casey that she would have to review it, so I didn't think that it was unusual that she hadn't had it yet.

Q Okay.

Did it surprise you that Ms. Casey -- well, you say it had just been sent back to Ms. Casey, I take it then that to your understanding, Ms. Casey was unaware that this has been pending for some period of time?

A I don't think she knew it was pending all that time. She wasn't even a U.S. Attorney the whole time so she wouldn't have known.

Q Did it surprise you that she didn't know?

A No.

Q Did you think to yourself anything along the lines of, oh, my God, I thought we had gotten rid of this and now this woman is calling my --

Mr. Fishman. I'm going to object to your inquiring into the thought processes -- she's here as a fact witness as to conversations she had.

Mr. Clark. Wait a minute. This is not being conducted according to the Rules of Civil Procedure, okay, and I'm asking for the witness' thought processes.

Mr. Fishman. I understand that.

Mr. Clark. I would like an answer.

You can make an objection, your objection is noted.

Mr. Fishman. I understand that. I don't believe it's appropriate to subject career Justice Department employees who are not supervisors or in the hierarchy of the Department to that sort of inquiry. It has been the subject of criticism by Chairman Hatch who is our oversight Chairman on the Judiciary Committee on the Senate side, I can understand that.

Mr. Clark. Okay. Your objection is noted.

If you want to pursue this point, either in a later

conversation or if you want to memorialize it, that's fine. Take it under advisement. At this point right now your objection is noted and I would like an answer.

Mr. Fishman. I would like the question read.

[The reporter read back as requested.]

Mr. Fishman. I'm not going to instruct the witness not to answer the question but I do think we need to have further discussions with the committee staff over the appropriate scope of depositions and the understandings with which we are proceeding.

BY MR. CLARK:

Q You can answer the question.

A No.

Mr. Clark. I have nothing further at this time.

Ms. Garcia. I would like to take about a 5 or 10 minute break.

[Recess.]

Ms. Garcia. Let's go back on the record.

BY MS. GARCIA:

Q Ms. Henneman, thanks for coming here today. I appreciate you taking the time to answer these questions thoughtfully.

First of all, I would like to know whether you are a public servant, a career public servant?

A Yes.

Q When you were creating the chronology that Mr. Clark referred to earlier today, could you take me through a couple of the entries here?

A Sure.

Q On February 9th of 1993, a memo was prepared, it states, in relevant part, memo prepared for Deputy Attorney General on USA recusal.

Is that a memo that was prepared in your office and then transmitted to the Deputy Attorney General's Office?

A Yes. That was the memo to the Deputy on the recusal.

Q At that point, so am I correct in saying that on February 9th of 1993, the Deputy Attorney General's Office first had the recusal request by U.S. Attorney Banks?

A Yes.

Q Subsequent to that, on March 19, 1993, the recusal request was forwarded to the Criminal Division; is that correct?

A I believe it was forwarded to Criminal before that by the Deputy Attorney General's Office.

Q Okay.

And on 3-19-1993 the decision was made in the Criminal Division as to whether there was prosecutorial merit to pursue the referral; is that correct?

A Yes.

Q And the referral at that time went to the Deputy Attorney General's Office for final determination on the recusal question; is that correct chronology of events?

A The memo to the -- yeah, the memo went to Doug Frazier from the Criminal Division with their conclusions.

Q And at that point, was it in the position of the Deputy Attorney General to make the determinations to whether Mr. Banks had basis to recuse or not to recuse?

A Yes.

Q From March 1993 through June of 1993, am I correct that the recusal request sat in the Deputy Attorney General's Office for determination?

A . I don't know.

Mr. Clark. Are you asking for the witness' knowledge?

Ms. Garcia. Yes.

The Witness. I don't know where it sat.

BY MS. GARCIA:

Q When you spoke with Mr. Frazier on June 23, 1993, did Mr. Frazier indicate to you that the recusal request had been decided upon and forwarded to the U.S. Attorney's Office in the Eastern District of Arkansas?

A They had sent it back to the U.S. Attorney's Office for a decision on whether there was prosecutorial merit or not.

Q Did he indicate to you when the decision on the

recusal question had been made and subsequent to that when the referral had been forwarded to the U.S. Attorney's Office?

A No, not specifically.

Q During this time frame, March of 1993 -- let's say January of 1993 through June of 1993, had your office submitted many recusal requests up through to the Deputy Attorney General's Office?

A Yes. They -- they go up there routinely, yes. I don't know how many.

Q Was there a lag in time as to the Deputy Attorney General's determination on those recusal questions?

A I'm not sure. I don't handle them.

Q Who would be the best to tell us that?

A Stephanie Johnson, or we could pull the log, but I don't know if the log would contain all the information that you need.

Q On October of 1993, the entry in the chronology referring, which is Bates No. 006584, a statement is made, the statement is, "USA acknowledged there was a problem with RTC and stated that in the past the RTC refused to turn over documents for USAO review." Do you know what that statement is referring to?

A Paula Casey had advised that there had been problems in the past. I think this was even before she became U.S. Attorney, there had been friction between the U.S. Attorney's

Offices and the RTC that they had had some problems, and in one instance the U.S. -- the RTC had refused to turn over documents to the U.S. Attorney's Office in a case.

Q Do you know whether these documents related at all to the Madison Guaranty --

A I don't think so. I think she was just giving me instances where there had been some conflict between RTC and the U.S. Attorney's Office and she wanted to resolve it since she was the new U.S. Attorney.

Q Okay.

I am going to hand you a document JJ0468. I believe you have reviewed this already today but I would like you to reread the final paragraph there, second to last paragraph.

Mr. Fishman. For the record, this is the May 19 E-mail of Jean Lewis.

Ms. Garcia. Correct, it's a May 19 E-mail from Jean Lewis to Lee Ausen -- I'm sorry. It's to Richard Iorio CCed to Lee Ausen.

The Witness. Okay.

BY MS. GARCIA:

Q The statement I'm referring to is, in quote, "when I explained that it was a referral out of Madison Guaranty forwarded to that office by Chuck Banks, she had immediate knowledge stating," in quotes, "oh, the one involving the President and his wife," out of quotes.

Were there several sensitive issues going in and out of the U.S. Attorney's Office at that time that you had become aware of?

Mr. Clark. I'm going to object to form.

Did you mean U.S. Attorney's Office? Or the Executive Office for U.S. Attorneys?

Ms. Garcia. I'm sorry, I meant the Executive Office for U.S. Attorneys.

BY MS. GARCIA:

Q Were there issues that came in front of you that were of a sensitive nature causing you to remember that issue because of the sensitive nature. Were there a lot of those types of issues before you?

A Yes.

Q Were any of them of such sensitive nature that -- I withdraw.

Because of the nature of those issues, did you have recollection of them months after they came before your desk?

A Yes.

Q Thank you.

Here is document JJ0469. It's another E-mail from Jean Lewis to Richard Iorio, CCed to Lee Ausen. The date is May 26, 1993. I would like you to review the middle paragraph?

A Okay.

Q The statement I will be referring to is the one in quotes. "She also stated that she was growing increasingly frustrated with the situation because she had seen the information, knew that it had come in and couldn't understand why she was having such a hard time tracking where the referral and exhibits had gone." Unquote.

A Okay.

Q Why were you frustrated with being unable to find the referral at the Department of Justice?

A Because I probably made, you know, 5 or 10 -- 5 to 10 phone calls trying to track it down and I was getting frustrated because I kept getting -- somebody was telling me it was here and here and different places, so, you know, making so many phone calls you start getting frustrated.

Q Have you encountered that in your days at the Department of -- those types of events in your days at the Department of Justice?

A Yes.

Q Did you ever get the feeling that someone was trying to hide the Criminal referral from you or any information from you --

A No.

Q -- in your pursuit of this?

A No.

Q Ms. Henneman, I'm going to show you a group of

documents beginning with Bates Nos. 005083 consecutively Bates through 005130. I believe you have looked at these documents already today?

A Yes.

Q I'm curious as to whether these are the only documents that Ms. Lewis transmitted to the Department of Justice and specifically to the Executive Office of U.S. Attorneys?

A That I'm aware of, yes.

Q Did Ms. Lewis ever indicate to you that she was going to transmit a legal review of these documents, a legal review specifically done by lawyers within the Kansas City Office of the RTC?

A Well, when we originally talked about her sending these documents, the additional referrals she wanted to send every -- the exhibits and everything that she had, and that's when I talked to Deborah.

She said we don't need all that and that we should not -- she should not send us all of those documents, we didn't need boxes and boxes of documents, that she should only send a copy of the cover letter, and I think there are summaries of all the referrals that she sent.

Q Do you recall Ms. Lewis or any other member of the RTC ever attempting to transmit specifically a legal review of these nine criminal referrals?

A No.

Q What is Mr. Marcovici's position at the Department of Justice?

A He's an attorney advisor within Legal Counsel's Office.

Q Was it unusual for Ms. Westbrook to have instructed Mr. Marcovici to take over the recusal issue for the Department?

A No.

Q During the discussions you had with Ms. Lewis in which she indicated that she wanted to transmit the nine Criminal referrals to the Executive Office, did she ever indicate to you that she feared someone in the U.S. Attorney's Office in the Eastern District of Arkansas would hide or -- would hide the referrals from U.S. Attorney Paula Casey?

A No.

Ms. Garcia. I believe that's all the questions I have for today. Subject to further questions.

BY MR. FISHMAN:

Q Let me just pick up just to clarify something that both Mr. Clark and Ms. Garcia asked you, which is about Jean Lewis' phone calls; okay?

Mr. Clark asked you, I believe, earlier whether Jean Lewis -- whether you had received similar types of phone calls or complaints from other investigators, remember that

question?

A Yes.

Q You said you had not, correct?

A Correct.

Q In your experience at the Department of Justice, is there sort of a chain of command through which those sorts of complaints ordinarily flow?

A This -- this is actually the first one that I've ever dealt with or the only one I've ever dealt with, you know, a complaint from an investigator that they were having a problem with the U.S. Attorney's Office. But, yeah, I would think there would be a chain of command if an agency was having problems with the U.S. Attorney, that the hierarchy in the offices would get together and talk it out.

Q If somebody wanted to follow up something at EOUSA, ordinarily the request would come in at the top; right?

A Right.

Q And if somebody wanted you to seek something out, it would come from the Director or the Legal Counsel herself?

A Yes.

Q You were just trying to give Ms. Lewis the best help you could?

A Yes.

Q You tried to do it diligently, I expect?

A Of course.

Q Because she was another Federal agent or is there anything more to it than that?

A No. Because she was another Federal employee. You know, normally you think the agent is on the same side as the U.S. Attorney's Offices, so I was just trying to help her out.

Q I just want to clarify a couple of things about some of the people you have mentioned in your testimony. When you -- let's start with Mr. Frazier's career, if we can, just to make it clear. He was an Assistant U.S. Attorney?

A Yes.

Q Do you know where?

A Middle District of Florida.

Q Then he came to EOUSA?

A Yes, as the head of Evaluating and Review staff.

Q Who are the people who go out and make sure that U.S. Attorney's -- periodically make sure that U.S. Attorney's Offices are --

A Running smoothly.

Q Then he became an Assistant Director of EOUSA?

A I believe so. Or Deputy Director.

Q And that was back in the early 1990s, I guess?

A Yes. When Deborah first came on board he was Deputy Director.

Q At some point when George Terwilliger was Deputy

Attorney General, Mr. Frazier was detailed up to the Deputy's office?

A Yes.

Q Where he remained after everybody else left from the Deputy's Office?

A Yes.

Q And he also has served a couple of times as Acting United States Attorney in various districts?

A Yes.

Q Where?

A Middle District of Florida, and I believe it's Nevada. He was the Acting U.S. Attorney.

Q And now he is back in Florida?

A Yes. But he works for the Executive Office. As the head of the Evaluation and Review staff.

Q Operating out of?

A Florida.

Q And is it fair to say that in your experience in the Deputy Attorney General's Office, there are one or two people whose function it is to be the liaison between EOUSA and the Deputy?

A Yes.

Q And Mr. Frazier played that role for some period of time?

A Yes.

Q And then who took over that role when Mr. Frazier left the Deputy's Office?

A I believe it was Dave Margolis.

Q And Mr. Margolis is who?

A The Associate Deputy Attorney General.

Q And the Associate, just so the record is clear, the Associate Deputy Attorney General is the top staff level in the Deputy's Office?

A Correct.

Q And Mr. Margolis also is a 30-year veteran of the Department?

A Yes.

Q And can you tell us something about Mr. DeFalaise?

A He was the U.S. Attorney for the Eastern District of Kentucky, I believe. It's either Eastern or Western. And --

Q In the late '80s?

A Yes. During the Republican administration.

Q And then?

A He came -- after the change in administration, he came on board as Special Counsel to the Director of the Executive Office.

Q Okay.

Where he remains?

A Yes.

Q Finally, just give us a sense of whether this

consumed -- this particular issue with Jean Lewis, and so forth, whether it consumed more or less of your time than other projects?

A More. Definitely.

Mr. Fishman. I don't have anything else. Thanks.

Mr. Clark. Hopefully, very briefly.

BY MR. CLARK:

Q You were just asked by Mr. Fishman about this chain of command that you understand there is in the Department to deal with issues that arise between agencies and U.S. Attorneys' Offices. In 1993, when you were having these communications with Ms. Lewis, at any point did you request that some other section within the Department of Justice deal with her so you could be relieved of it?

A No.

Q Did it -- did it occur to you at the time to make such a request?

A No.

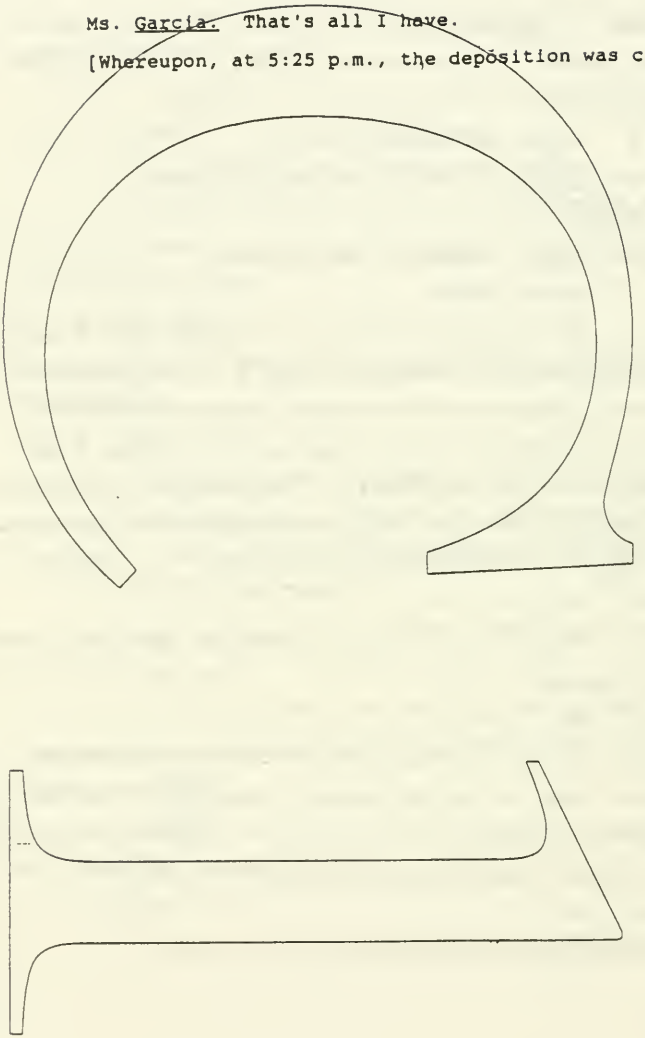
Q So that although this was taking a substantial amount of time, it did not become so burdensome that you registered a complaint with anyone that this was not really your job and somebody else should really take care of it?

A No.

Mr. Clark. That's it for me.

Ms. Garcia. That's all I have.

[Whereupon, at 5:25 p.m., the deposition was concluded.]



DEPOSITION OF GEORGE ALLEN CARVER, JR. IN RE: S. RES. 120

TUESDAY, OCTOBER 17, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of GEORGE ALLEN CARVER, JR., called for examination pursuant to notice of deposition, at 2:53 p.m. in Room 534 of the Dirksen Senate Office Building before JOANNE LIVERANI, a Notary Public within and for the District of Columbia, when were present:

MICHAEL CHERTOFF, ESQ.
Majority Special Counsel
VIET D. DINH, ESQ.
Majority Associate Special Counsel
GLENN F. IVEY, ESQ.
Minority Counsel
RICHARD BEN-VENISTE, ESQ.
Minority Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

PAUL FISHMAN, ESQ.
U.S. Department of Justice
10th Street & Constitution Avenue, NW
Room 4114
Washington, DC 20530
On behalf of the Deponent.

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EXHIBITS

George Allen Carver, Jr.

DEPOSITION NUMBER	IDENTIFIED
GAC Exhibits 1 through 9	7, 1651

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PROCEEDINGS

Whereupon,

GEORGE A. CARVER

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. CHERTOFF:

Q Would you please state your full name and spell it.

A Full name is George Allen Carver, Jr. G-e-o-r-g-e, A-l-l-e-n, C-a-r, v as in Victor, e-r, Jr.

Q Mr. Carver, let me just make you aware of the ground rules in the deposition before we proceed. As you're aware, this deposition is being conducted pursuant to Senate Resolution 120 which establishes a special committee of the Senate to investigate Whitewater Development Corporation and

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other related matters.

Pursuant that Senate resolution, among other things, the Senate is examining whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings & Loan. And in addition to that, we are examining the handling of certain investigation into Capital Management and David Hale, which began as a Small Business Administration investigation and later was moved over to the Department of Justice. And these issues will be the focus of the deposition today.

This deposition is taken in advance of a public hearing, I can't tell you at this point whether you will be asked to testify at the public hearing. We will give you notice if your testimony is required.

As you're doubtlessly familiar from past experience, the way we proceed here is I ask you questions, which you are obliged to answer under oath. If you don't understand a question, please let me know and I will rephrase it.

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Likewise, if you want a break to consult with Mr. Fishman, who I gather is representing you here for purposes of this deposition, let me know and we'll go off the record.

A One clarification, I think that Paul is representing the Department of Justice here, and I am perfectly content with that.

Q If you want to consult with Paul Fishman you let us know, we will go off the record and you can consult with him.

The stenographer will prepare a record of the questions and answers which will be treated as committee confidential until the hearings begin. At that point, some or all of the deposition may become public. In any event, I anticipate that some months down the line the deposition in its entirety will be public.

Before the hearings, you will receive a letter from the committee telling you that you can come to the Senate, with Mr. Fishman, and review the transcript of your deposition in order to make any corrections. But I should advise you if you make

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corrections of a substantive nature as opposed technical or clerical corrections, those changes themselves can be the subject of a recall deposition.

If you, in fact, are called to testify at a public hearing, you will receive a copy of the deposition four days in advance of your testimony, but it's limited to your use. It is not something that you will be given for purposes of distributing to others. And, in fact, it will be a condition of your receiving the deposition that you agree to hold it to yourself and any counsel who may be representing you.

With respect to the issue of objections, any objections by Mr. Fishman will be noted for the record. Once those objection are noted, go ahead and answer the question. There are two areas in which an objection may result in an instruction to you not to answer. One is if there is an objection on the grounds of some privilege; the second is if there is an objection on the grounds that we are exceeding the scope of the resolution. Ultimately, if we can't

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work such an objection out, if one is raised, we take it to the committee chairman who has the final say on ruling on those issues.

Are there any questions?

A None. I understand.

Q Mr. Carver, you have testified before the House in a deposition; correct?

A Before some staff of the House committee, that's correct.

Q And when was that?

A About a week or so ago. I don't remember the date.

Q Have you had an opportunity to review your transcript of that deposition?

A I have.

Q Now, this afternoon you came in and presented us with a number of documents. I am going to ask that they be marked as GAC Exhibits GAC 1, 2, 3, 4, 5, 6, 7, 8, and 9 for identification.

(GAC Exhibits 1 through 9 identified.)

MR. CHERTOFF: Just for the record, GAC 1 is an one-page resume. GAC 2 is a document of nine

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pages entitled "Chronology re: Madison Guaranty S&L Association." GAC 3 is a four-page document entitled "Referral Number C0004." GAC 4 is a one-page document entitled "Charles Banks 10/16/92 letter." GAC 5 is a one-page document entitled "Charles Banks's 1/27/93 letter."

GAC 6 is a one-page document entitled "Doug Frazier's February 18, 1993 memorandum." GAC 7 is a two-page document entitled "Mark MacDougall's 2/23/93 memorandum." GAC 8 is a one-page document marked memorandum to Frazier, 3/19/93. And GAC 9 is a two-page copy of a Xerox Wall Street Journal article entitled "Cover-up," dated 8/8/95.

Now, Mr. Carver, putting aside the newspaper article, which is self-explanatory, would you explain to us what GAC 1 through GAC 8 are?

A GAC 1 is a short summary of my background which I prepared in anticipation of this proceeding today, as a result of having been asked for that sort of an item at the House proceeding.

Q GAC 2 through 8 are what?

A GAC 2 through 8 are a package. 3 through 8

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are attachments to 2. 2 is a chronology that I prepared, frankly, for me. But I understood and understand if I am going to use it, you get a copy.

But in any event, it is my chronology for my use and for my refreshing, and it contains information which, in my judgment at least, is pertinent to the matter of referral C0004 and the subsequent referrals that were made later from the Resolution Trust Corporation. So these are pieces of information that I've selected for me.

Q When did you prepare GAC 2 through 8?

A They have been prepared over a period of time, actually, because as I go through these reviews, and continue to update and continue to find typos and things like that, I update it. This particular document, though, was worked on primarily Sunday of this week. And then it was completed this morning, early. Various parts of it.

Q When did you begin the process of preparing the document that now exists in the form of GAC 2 through 8?

A In one sense, a substantial amount of time

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before in connection with the FBI interview that was taken of me during the independent counsel's investigation. And I continued to look at that through the grand jury appearance, prior to the grand jury appearance, and I have continued to look at it in the course of getting ready for the various proceedings.

So the last time, actually, before this that I worked on it was before the House appearance and I wanted something I could refer to.

Q The initial time you prepared a variation on this document in connection with an upcoming independent counsel interview was approximately when?

A The approximate date? I am not sure. I have to go back.

Q Could you give as you month?

A Several months ago. Early this year.

Q It was in 1995?

A Yes.

Q Is it fair to say that the predecessors of GAC 2 through 8 were prepared sometime during 1995?

A That's right.

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With the exception of 3 through 8, those summaries of the documents, I just did those.

Q You mean recently?

A A week or so ago, yes.

Q Just to be clear on this, GAC 3 through 8 were -- first prepared in some form or another, since the summer of 1995?

A That's right.

Q And GAC 2 was first prepared, in some form or another, sometime in 1995?

A Earlier in the year, that's correct.

Q It's based largely upon your review of documents that have been produced?

A It's based primarily on the collection of the fraud section's materials that I had assembled early in this process when we began to receive inquiries from Congress, from various members of Congress, and committees, and the grand jury. I -- what I had done at that point was to have fraud section materials collected and located in a central location and placed under the custody of a paralegal with the location of those documents made a matter of

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record so that, if necessary, we could go back and determine who provided the documents that were placed into our central system.

That system has been maintained, that system was at one point copied for the public integrity section so that they could carry out their function. Actually the original set was given to the public integrity section so they could carry out their function to respond to the Congressional committees and independent counsel because that's their function. And we have a copy set, so this comes from the copy set and I go back and review that in anticipation of these kinds of proceedings.

Q Let me direct your attention, Mr. Carver, to the year 1993. During that year, what was your position in the Department of Justice?

A Principal deputy chief of the fraud section in the criminal division of the department.

Q And in the spring of that year, who was your supervisor?

A Spring of 1993, Jerry McDowell.

Q Who was his supervisor?

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A Primarily Larry Urgenson, who was then Deputy Assistant Attorney General. He was acting Deputy Assistant Attorney General, that's correct.
Q In the spring of 1993, who was the acting Assistant Attorney General?
A John C. Keeney, who is known as Jack Keeney.
Q And was he the operating head of the criminal division during the spring of 1993?
A That's correct.
Q When did you first become involved in any investigation involving Madison Guaranty?
A Never.
Q When did you first see a piece of paper that involved Madison Guaranty Savings & Loan?
A I believe that I saw -- and I say "believe," based on the material that we have here -- that that would have been in October of 1992.
Q And what did you see in October of 1992?
A Again, I believe that what I would have seen, and I don't know that I saw this or not at the

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time that it came in in that period of time, I don't know that. But, I'm -- in my own mind I am confident John art bury who is a deputy section chief who then reported to me or Audrey Ward would have mentioned that. I don't know whether they did or not.
So, at the time when it came into the fraud section, and then was assigned to John art bury as an FYI, I believe I would have seen it. I don't know about it.
Q Do you know why -- when you say it came into the fraud section, you are referring to a criminal referral from the RTC that has the number C0004?
A The way that it occurred, based on my understanding of it, and I am absolutely positive of this based on my understanding of this system, is that the criminal referral was made to the United States Attorney's Office in Little Rock, Arkansas. And that at the same time, the referral was provided to the Little Rock division of the Federal Bureau of Investigation for review.
When they received the referral, they

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evaluated it locally and then they had communication, both the Bureau and the United States Attorney, with both FBI headquarters and with the Executive Office for the United States Attorneys, initially.

Q Now, how did that get to the fraud section?

A From looking at Carver 2, you will notice on there a routing indicator that shows how it got there.

Jack Keeney -- and I am positive of this from the documents -- sent it to the fraud section with a notation on it, based on looking at the notes, communications that he had to have had with Larry Potts of the FBI, or that Bob Mueller had to have had with the FBI.

Bob Mueller at that time was the Assistant Attorney General, criminal division in discussing whether to do anything about that referral. And they had received notification of the referral from Charles Banks, who was the United States Attorney, in the form of a letter that Banks sent to the department, and the FBI had received notification of it as a result of a telecommunication to their

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headquarters. Both of a mind apparently that, at that juncture at least, they weren't inclined to do anything because of the upcoming Presidential election and setting out their analyses of the referral.

The package then was sent either by Mueller, by Keeney, to the fraud section to the attention of McDowell. And the records -- the correspondence tracking records of the section show that Audrey Ward is a chief paralegal, assigned it to John art bury, I believe, from these records.

And it had an FYI on it, in other words, for your information and a notation on it, that nothing needed to be done at this point.

Q Is it customary to have the fraud section receive an FYI on a case that's pending or has been presented to a U.S. Attorney's office?

A I don't think there is a custom that you could describe, because I think that many things are ad hoc within the criminal division as they are in the U.S. Attorney's Office. So to put it another way, it wouldn't be surprising, unusual or anything

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else of that nature since the fraud section would be the one that would have some interest in that sort of thing and should be the section that would know something about it, that at least it is around.

So I would think that somebody up the chain of command within the organization would send that down to alert the section at least that it exists and someone would know about it.

Q Did there come a point in time that you received any assignment or took upon yourself any assignment in connection with Madison Guaranty Savings & Loan?

A There was, and again the chronology is set out in the CAR 2.

Q You say CAR 2, you mean GAC 2?

A GAC 2, I'm sorry. There was a referral made to the fraud section of the criminal division. And as I reconstruct it, the referral came in on about February 22, 1993; from the materials here, that it was received in the fraud section on about that date. The chronology shows its history before that. That it consisted of a memorandum from Douglas

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Frazier, who was at that time either an associate Deputy Attorney General or the acting principal associate Deputy Attorney General. Both are used in the materials addressed to Jack Keeney, asking him to review a package that was attached, which consisted of a memorandum from Tony Moscato who by that time was the director of the Executive Office for United States Attorneys.

And attachments to that consisting of, two letters by Charles Banks, one of them dated in January of 1993, the January letter was the significant piece of correspondence, in that it expressed Banks's view at that point, that he wanted to recuse himself and his office from reviewing or doing anything further with referral C0004. This relates back to his earlier October of 1992 letter, in which he had said that he saw no information in it indicating wrongdoing by people named as witnesses, but saw some potential and was prepared to discuss, if it became something to be discussed in the future, whether or not several individuals associated with Madison should be investigated. And he suggested in

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that that perhaps the FBI could go out and do a preliminary by just talking to the three individuals that he named as potential subjects.

So that package, with Moscato's cover memorandum came down to Jack Keeney with the request for Jack Keeney's advice, what does the criminal division think about the request made by the United States Attorney to recuse, and to get out of it. The Moscato memorandum listed three options: Send it back to him, assign it someplace else, or other, undefined. That memorandum was addressed, Moscato's memorandum was addressed through Doug Frazier and was designed at least to go to Stuart.

Q Gerson?

A No, the acting -- yes, Stu Gerson, the acting Attorney General at the time. So Jack Keeney got the record. And then the records show that Jack Keeney sent the package to the fraud section, as I indicated earlier, on or about February 22, 1993 for review.

I was in San Diego, California on an advance FIF course and to visit with Richard Fishkin

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who was an Assistant U.S. Attorney in that office and was at that time in charge of the San Diego bank task force. I had people assigned to that task force so I spent part of my time out there with Rich reviewing task force operations. I mention that, because during that period of time, I may have gotten a call from Jerry McDowell or I could have had a call from Mark MacDougall, but I have absolutely no knowledge if that occurred.

Q Were you involved in reviewing the question of what recommendations should be made on the recusal issue?

A I am positive that I was.

Q Do you have a recollection of what that involvement was?

A Not more than a general recollection of being involved, but I got back on Thursday night of the week of the 22nd according to our records. Friday morning I had a national bank fraud working group meeting, so Friday afternoon I could have talked about this. And I notice Mark MacDougall had done a memorandum on, I believe, the 23rd of

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February, 1993, according to the memo, at Jerry McDowell's request. So I could have had contact with him on Friday; I have absolutely no memory of that at all.

On the following Monday, which I believe was March 1st, once again I could have had contact with Mark MacDougall, Jerry McDowell, both of them. I have no memory of that at all or anybody else having anything to do with it, other than a general recollection of being involved in the process. And I am absolutely positive that I wrote the cover memorandum that went from Jack Keeney, or at least was addressed from Jack to Doug Frazier, that went out of the fraud section the next day, on March 2nd, 1993.

Q What was your understanding, to the extent you have any recollection, of your involvement in the process? What was your understanding of the reasons, as of February 1993, that Mr. Banks believed his officials had to recuse themselves from this matter?

MR. FISHMAN: What was his understanding at the time?

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MR. CHERTOFF: Yes.

THE WITNESS: My understanding was based on the Banks letter and what he says. And what he said was that he had prosecuted McDougal before, that the prosecution had resulted in an acquittal; that during the course of the prosecution, there was apparently some vigorous litigation in and the defense was aggressive in making various allegations, I suppose, during the course of that litigation. And that one concern he had was that there would be an appearance of a conflict of interest if he were to go back and prosecute McDougal again, that it would be a rather celebrated sort of thing where allegations would be made against his office. I am talking now about the January letter that I have outlined for you, I think you can see what he says.

Beyond what's contained in the letter, I have absolutely no idea if there was anything beyond that.

BY MR. CHERTOFF:

Q In your mind, was -- I am trying to get your understanding of what Banks's concern is. Your

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understanding of Banks's concern was that having prosecuted McDougal once before, resulting in an acquittal and contention case, that he would be somehow the subject of accusations if he prosecuted him again.

MR. FISHMAN: If I could clarify, not an objection, but I think he said he has no recollection of that at the time. My understanding of his answer, he has since represented the letter and gave his interpretation.

THE WITNESS: I'm sorry, I am going through the letter, I am talking from the letter.

MR. FISHMAN: That's his understanding now.

BY MR. CHERTOFF:

Q Do you have any recollection of your understanding at the time?

A No.

Q Was there discussion at the time, that you recall, concerning whether Mr. Banks's stated reasons for recusal are valid reasons to recuse oneself from the case?

A No.

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Q Now, stepping back and looking at it from the standpoint of today, based on your experience in a criminal division, is it a valid reason to recuse yourself from a case that you previously prosecuted the potential defendant and that prosecution resulted in an acquittal?

A Not necessarily, but I want to be real clear here. I am going to try to put it in some perspective. You have an October letter from Charles Banks, and in that letter, some indication that he might be willing to talk with the FBI later about some of the information contained in the referral as it related to McDougal and his wife and a woman named Lisa Anspaugh; it is in the documents.

I -- and that the bureau had reviewed something like 300 documents, relating to the referral. And that the referral indicates itself that the Resolution Trust Corporation had examined the referral, or at least examined the matters they were concerned about. But it decided that it would be prohibitively costly for them to do the kind of financial analysis that they would have to do in

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order to determine how valid their theory of prosecution might be.

There was an indication that Banks was going to look at that, deal with the bureau eventually after the election and make some determination about whether or not any sort of investigation would be indicated, whether he wanted to use his resources for it, whether he thought there was any potential.

The January letter came in in that context, and in that light. He was leaving. He had mentioned in his letter, I believe, that he was leaving in early March, of 1993. So he was going to leave and there would be an acting United States Attorney in the office until the new U.S. Attorney came in.

In the face of all of that, looking at it today and trying to think back how I would think about this at the time, there was absolutely no justification -- or maybe justification is too strong a word -- no necessity for a United States Attorney's office, where the assistants familiar with the case, where the FBI agents familiar with the case, where

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the records, where the grand jury, where the courts all existed, would compel or require a recusal.

And that, if the matter were to go back and there were to be a strong reaction to that, it could be visited further, it could be revisited further, it could be gone over. But on the face of it, on the basic question of recusal or not, the way I see it today, the way I would have seen it then and what I am sure I told Jerry McDowell then -- and I've got to believe I had a conversation with McDowell, and that's not from recollection, but from my mind, it had to have happened because our relationship is such that we talk. And I am sure we talked about this and I do have a general recollection of being involved at the time.

And what I would have told Jerry is this should go back to the United States Attorney's Office, they should handle it, somebody should say handle it unless you come up with a lot better reason than this for leaving that case.

Q Now, you've testified that you have a general recollection during the period of time, the

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last week in February, the very beginning of March, 1993, of being involved personally?
A Not in the last week of February.
Q February 22?
A I don't think. The 22nd through the 24th, I was off in San Diego.
Q Let me amend that; sometime during the period from the last week of February through the very beginning of March, you have a general recollection --
A Yes.
Q -- of some involvement, personal involvement in the issue of Madison Guaranty insofar as it related to the recusal question; right?
A Yes.
Q When is the next time you have personal involvement in anything related to Madison Guaranty?
A I have a positive recollection of becoming involved in it in the latter part of 1993. And I know it was in September, at least by September, and that's a mix between looking at documents, again, but I know I was involved in it in that period of time.

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Q How did you come to be involved in it?
A I believe I have a recollection of Jerry saying something to the effect that we got a matter and I want to talk about it, basically. And that was either in the hall or in his room, but he had a communication with respect to allegations being made by David Hale. And my recollection is, at that point, Irv Nathan had had some contact with Jerry, and Irv Nathan had received information and Irv Nathan wanted Jerry to pay attention to it and wanted the FBI to pay attention to it at that time. And Jerry involved me at that point and called me in.
Q Now, in September of 1993, Mr. Nathan was the principal associate Deputy Attorney General?
A You got it.
Q And as such, he was essentially the principal assistant to Mr. Heymann?
A To Phillip Heymann, that's correct, and that's H-e-y-m-a-n-n.
Q What was the information that you first heard had come from Mr. Hale in September of 1993?
A I'm thinking because I have a recollection

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that we got some letters from Paula Casey about that time about the plea negotiations with Hale. But sometime around September, both from the FBI, which provided information from the Little Rock division of the FBI in the form of telecommunications, and from the FBI white collar crime section, and from the financial institution fraud unit of the white collar crime section, and I guess from Irv Nathan to Jerry McDowell.

And between all of those sources -- and I don't remember whether Hale had gone public yet or not then, but in any event, my understanding of it was he was alleging that essentially the Whitewater Development Corporation had been involved in illegal activity relating to Small Business Administration financing. I mean, that's a very general statement of it, but that's what it was, the gist of his allegation.

And that he had had conversations or communications of one kind or another with President Clinton, prior to his becoming the President, that he had had conversations or communications with

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McDougal, I think Susan McDougal, which to him indicated that these people were going to misuse Madison moneys and Small Business Administration moneys.

There is much more detail about that, but that's my general recollection of it.

Q What is your understanding of why this allegation was transmitted to the Department of Justice in Washington as opposed to being left in the U.S. Attorney's Office in Little Rock?

MR. FISHMAN: Again, by way of clarification, I think he testified that Irv Nathan got information and so --

BY MR. CHERTOFF:

Q I am asking why it came to Mr. Nathan's attention.

A Do I know why?

Q Or how it came to Mr. Nathan's attention.

A I think from a newspaper report.

Q What was your understanding of what Mr. Nathan did after he saw the newspaper report?

A I think he talked to Jerry McDowell and I

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think he talked to Jack. I had no personal communication with Irv Nathan at all.

Q When was the first personal communication you had about this subject matter?

A This matter?

Q Mr. Hale.

A I don't know, but I believe that it was in the latter part of September of 1993 or around the middle of September of 1993.

Q It was in a meeting?

A Well, again, from Jerry.

Q And what do you remember Mr. McDowell telling you?

A I don't remember what he told me other than what I have related to you so far, and I do have a recollection that the conversation was about information from Nathan, information relating to Hale. And I think too about that time we met with the FBI, we met with Joe Gangloff from the public integrity section; there were meetings that were occurring. And these things in that period of time were happening pretty rapidly and pretty often.

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Q Well, commencing from the period of time that you first heard from Mr. McDowell on the subject of Mr. Hale, did you have a particular assignment in connection with the Hale allegations?

A Yes, as Jerry McDowell's principal deputy, one of my jobs is just to be a sounding board for Jerry McDowell, apart from my general responsibility for the overall financial institutional fraud area. That was one of my responsibilities. Very early in that process, it is my recollection, not a specific one, but in my mind this occurred.

I suggested a team to take over the investigation. And it may have been one person at a time or all at once, and it may have been that McDowell asked do you think this person is good or not, but I believe the suggestion came from me, that we would be prepared to go in the event that we were called on to take over the matters. And as I recall, there was a question of recusal at that point and whether there should be, whether it would be appropriate at that juncture in light of what was going on in the papers at that time, the press and

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the nature of Hale's allegations, whether there should be a recusal.

And my thinking, I'm sure, positive, at the time was, that if we got called on to do it, we needed to be able to be immediately responsive if the Deputy Attorney General of the AG said put somebody on it. So I thought we ought to identify people who could do it. My thinking further was that we had to identify few people who were imminently capable of doing it and whose work would be credible if and when they got assigned the project.

So, one person I identified early was Donald McKay, who in my mind was a perfect choice for a number of reasons.

Do you want me to go into that?

Q No, we can get into it in more detail as we go along. Give me just an overview.

A Donald McKay was a person who came immediately to my mind because of my -- since his arrival in the fraud section on assignments that he had been given in my section. Second, I thought of Dwight Bostwick. I headed a team that was

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investigating Banking Credit and Commerce International in that time frame and I knew Dwight and his work from that and from his reputation when he was employed in the Eastern District of Virginia.

Jim Nixon was the third person I identified who I thought would be an outstanding person to participate. I had seen him, in the context of BCCI again, and knew him to be a very good lawyer. And then eventually a person named Jim Gillis who really wasn't with him for more than a week or two before he transitioned in as counsel.

Q What was the reason you thought there would be a possible need to have a team from the fraud section of main Justice take over this case?

A I am positive that in my own mind, having been around in the government for more than a few years at this point, that that seemed very likely to occur because of the nature of the allegations which were focusing on, at that point, as I recall, generally the President of the United States. And that there was an indication that Paula Casey had had some relationship at least with these folks before so

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that it wouldn't be shocking if that were to occur.
In that same period of time, I am positive that Jerry McDowell mentioned that as a possibility. I just don't know when in relation to when it came up, but I know I would have thought about it independent of anything McDowell said. And I heard too that at some point they were going to have a meeting with Paula Casey to discuss it.
Q To discuss what?
A To discuss the recusal. This idea, though, of getting the team together predated that, about the meeting with Casey.
Q Had you previously dealt with Paula Casey?
A No.
Q Had you ever met her?
A No.
Q During this period of time, in September 1993, did you learn anything about her background, were her background or her expertise discussed?
A I am sure I did. And I have no idea what -- and I am saying that because I know we must have talked about that, I just don't remember.

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Q Let me direct your attention to GAC 2. On page 5, as you reconstruct your chronology, you indicate that you had a meeting on September 21, 1993.
A Right.
Q Which is four days after the FBI has a dated telex regarding David Hale?
A Right.
Q Is this meeting of September 21st the first meeting you can recall having with Justice regarding the Hale issue?
A I don't remember the date at all, but I remember meeting on Hale and I don't remember if this was -- I don't remember if this was the first meeting or not. I don't believe it was the first meeting. McKay wasn't at the first meeting I had. I do know that, positive of that. That there was an earlier meeting with the FBI, representatives from the FBI and Jerry McDowell in his office, right about this same time frame. And it may have been on the 17th, it may have been on the 20th, it may have been on the 21st even in that time period. But it was before

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McKay was in, to my recollection.
Q Directing your attention to the meeting of September 21, what do you recall being discussed at that particular meeting?
A I don't -- other than I am sure Hale's allegations, but I have no recollection or memory of the meeting or particular discussion in it.
Q What about the meeting on September 29 that you have listed on page 5 of GAC 2, do you recall anything about that meeting?
A No. I know that it existed and obviously I have a general recollection we were talking about Hale at these meetings and we were talking about the allegations that Hale was making, what response should be made to the allegations, wanted assurance that the FBI was doing what it should be doing in Little Rock, Arkansas at that point in regard to Hale's allegations.
I remember, too, at the same time frame there was concern in the FBI about getting documents that they wanted from the Resolution Trust Corporation. And the United States Attorney's Office

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had expressed some concern about that, too, so one of the task things that I remember at the time was to try to work that out with the Resolution Trust Corporation and get them and the bureau to try to work that out so the Bureau could get what they wanted. And we spent some time on it.
Q Why was Mr. Gangloff at this meeting on September 29?
A Joe Gangloff at the time was the acting chief of the public integrity section. I believe that he would have been there because I had the election crimes responsibility under his bailiwick.
He also was familiar with, very familiar, Farrington especially familiar with the independent counsel law that had been in place prior to this and what was going on on the Hill with respect to an independent counsel. So for those reasons, I think Joe would have been there and to the extent there may be a public official involved in this someplace, Joe would have an interest in that as well.
Q Let me direct your attention to a document that's been previously marked for identification with

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Bates number GAC 1632 and GAC 1633, which is a memo dated October 28, 1993, to the Deputy Attorney General from Jack Keeney, designating unit fraud section regarding FBI report of status of the Little Rock, Arkansas-based investigation into various activities of David Hale.

MR. FISHMAN: If I could, just for the record, the Bates number on the very bottom of the page 002204 is the Bates number that would correspond to the index and the GAC, which refers, of course, to Mr. Carver is the internal fraud stamping that has to do with the documents he discussed before.

MR. CHERTOFF: If you want, we can use 2204 as the identifying number.

MR. FISHMAN: That would be consistent with the House depositions as well.

THE WITNESS: All right.

BY MR. CHERTOFF:

Q Have you seen this?

A Yes, and the GAC on this indicates that that came from me personally and that I gave this particular copy to a paralegal in the fraud section

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that was charged with our files. That's how we get into that, we put the initials of the people and the numbers.

Q Did you prepare this document or a draft of it?

A I don't believe that I prepared it. I know I was involved in it, and involved in the preparation of it.

Q How were you involved in the preparation of it?

A Part of this is based on my going back through the fraud section's collection of files, I might add, yesterday.

Jerry McDowell, I believe, was out of the office between the 28th and about the 1st of November, and there was a second one of these the 1st of November.

As I understand it, Jack Keeney wanted an urgent report to go up. I believe that John art bury worked on this. John worked for me, so I think John had some involvement in the preparation of this report of the 28th.

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And I believe that it's based substantially on an FBI report dated October 19th, 1993. And the reason I believe that is it says all of these allegations are being vigorously pursued and that's virtually verbatim out of the FBI's report of October 19th, 1993.

Q During the month of October, before this report was prepared, did you have further meetings or communications with anybody at the Department of Justice regarding the standby team that you had designated in the fraud section to handle this matter?

A Without it a specific recollection, I am positive I did.

Q Do you have a general recollection?

A Yes, generally that I was talking with John art bury in the period of time, general -- I am just sure that I would have had contact. It is just the way I work and I would have been talking with him to say where are we, what are we doing, what's the status.

I am sure Jerry McDowell and I would have

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talked. He is on one end of the building, I am on the other. We walk up and down the hall and see each other. And this was a topic of discussion during that period of time.

Q When you say "it was a topic of discussion," what in particular was being discussed?

A What was happening, what appeared in the newspaper that day, what the FBI had said, what the status of the dealings with the Resolution Trust Corporation were, those sorts of things.

Q Was the fraud section getting reports from the U.S. Attorney's Office during the month of October concerning the investigation?

A I believe that Jerry McDowell was in contact with Paula Casey so the answer, reports, I think so. And I know that there were communications between Jerry -- let me just -- before I say I know, I'm sure there were communications from Paula Casey. I do know for absolutely certain that Paula Casey sent the fraud section copies of the correspondence with David Hale's lawyer, for example.

So, yes, there were reports from Paula

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Casey in the period in that sense.
Q Were there discussions during the month of October about whether Ms. Casey should continue to keep the case herself or whether she should recuse herself?
A Again, I am positive there were. I don't know, I don't have a specific recollection of it, but I am looking at the recusal that followed in November, I believe.
Q Do you have a general recollection of discussions about that?
A Yes. What I'm hesitant about is saying October or September. I just think in that whole period of time we were talking about that.
Q What was the discussion that you were privy to at main Justice concerning this issue of recusal of Ms. Casey?
A That it would be a good idea if she would recuse.
Q And what was your understanding of why it would be a good idea?
MR. FISHMAN: Let me object to the form of

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the question. I mean, whose idea would matter? I mean, I can't imagine that one person -- he would be able to speculate on different people's ideas.
BY MR. CHERTOFF:
Q What, in your mind?
A What's my sense?
Q In your mind, what was the articulated reason that it would be a good idea for her to recuse herself; what was being discussed?
A Because of the Hale allegations, the location of the Hale allegations, and some impression at that point that that case really needed to be developed and worked and resolved successfully. That there was more coming in, as I recall, about that period of time, so there were other allegations that were coming in. That there were headquarters components that were involved in this thing now, in the sense of the Resolution Trust Corporation; certainly at their headquarters level, the Small Business Administration.
In a short form I suppose, for the credibility of the investigation, and I am not sure

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what provoked that, for the credibility of the investigation and to ensure that the investigation was handled professionally. And I don't mean to suggest that the United States Attorney's office would necessarily not have conducted it professionally. But I am sure there was a sense that it needed, at that point, headquarters attention.

And that I think the focus at that time, the public focus too was increasingly, if I recall, on Paula Casey and her relationship with the Clintons. And I think I am right that that was of considerable discussion and import in the public domain, and whether this is what influenced Phillip Heymann or influenced anybody else involved in the process, I don't know. But I know what I think.

Q Did there come a point you became aware that somebody or more than one person from the Department of Justice suggested to Ms. Casey that she recuse herself?

A Yes.

Q Tell us how you learned about that.

A Jerry told me.

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Q Do you remember approximately when he told you?

A Prior to meeting with Casey, Jerry said he was going to meet with Paula Casey, and I believe that I learned just before he went up to visit the Deputy Attorney General and whoever else, that a meeting had been scheduled with Paula Casey to discuss the recusal.

Q That's a meeting in Washington?

A Yes, and that she was in town. I am not sure what she was in town for, whether that was the sole event or there was some other reason, but there was a meeting. Jerry came back from the meeting and said Paula Casey was going to recuse, she was going to recuse or would recuse.

MR. IVEY: Before we get too far, can we take a short break.

(Recess.)

BY MR. CHERTOFF:

Q Back on the record.

Mr. Carver, directing your attention again to this conversation you had with Mr. McDowell before

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the meeting with Ms. Casey, what do you recall Mr. McDowell telling you, going into the meeting, concerning what the subject of the meeting was going to be?

A I don't, but my sense is that he was going up to talk about and talk with Paula Casey and it was going to be on the subject of the recusal. There may have been more to it than that, but that's what sticks in my mind.

Q Did he offer a prediction as to what Ms. Casey's position was going to be on recusal?

A Not that I remember.

Q Did he tell you there had been previous discussions about recusal?

A No, I don't remember that, but I believe that there were, and I believe he mentioned that before, that there had been conversations, ongoing, about Paula Casey's recusing.

Q Was it your understanding, again before this meeting with Paula Casey, that Ms. Casey had been taking the position she was not going to recuse herself?

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A That was my distinct impression, yes.

Q Was it your understanding that Mr. McDowell and others in the department in Washington were urging her that she should recuse herself?

A Precisely, absolutely.

Q Did Mr. McDowell comment to you, again before this meeting with Ms. Casey, about the character of any discussions he or anybody else in Washington had had with Ms. Casey about this issue of recusal?

A I don't know whether he did or not. My memory of it is that there was a sense within the department above me that it would be best for the Department of Justice, for the United States Attorney's Office in Little Rock, Arkansas not to continue with the Hale investigation in light of the Whitewater allegations. And that is an impression that's very firm in my mind, and that this wasn't immediately happening, and that there was a sense that it should be talked about.

I didn't sense that there was resistance in the sense that, someone saying I am just not going to

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do something. My sense of it was that there was going to be a meeting to sit down and talk about what the best thing to do would be. And my sense of it again is that the meeting that Jerry was going to go to was at least going to include as a topic of discussion that topic from the standpoint that -- and to discuss with Paula Casey what the feeling was that should be done.

Q Now, after that meeting, what did Mr. McDowell tell you, again as best as you can remember, about what had been discussed concerning recusal at the meeting?

A The only recollection I have in my mind is that he came back and said it appeared she was going to recuse.

Q Now was that -- do you know when -- withdrawn.

Did he tell you on this occasion when that recusal was going to be effective?

A Not that I know of. He may have, I just don't remember that.

Q Do you know how long after the meeting it

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took for the recusal to become effective?

A No. I mean, I don't know whether that meeting that they had up there or not -- and I think it is in here in the chronology.

Q If you want to take a look and refresh your memory.

A Let me see. All right, there is an entry on page 6, November 5th, where Jerry McDowell is forwarding Irv Nathan's's E-mail saying that Little Rock U.S. Attorney Paula Casey was recusing her office. In my mind then, there was a meeting right around November the 5th, and in my mind, the meeting would have been before this. And this was some kind of confirming E-mail.

Q Do you know how long before that that was, before this November 5th E-mail that meeting was?

A No, and I am emphasizing, too, that's what my mind is saying.

Q You don't have a distinct recollection at the time?

A No, no, but that's what I believe.

MR. FISHMAN: Off the record.

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(Discussion off the record.)
THE WITNESS: And looking -- one other entry fits in, if you look at the November 1, 1993 entry, where it says too that Paula Casey had not yet requested any assistance from the criminal division. And what that is a specific reference to is that she had the Hale case at that point and she had nine, as I recall, criminal referrals from the RTC. And what's evidenced by that, in my mind, is that at least as of November 1, she had not decided that she was going to recuse herself or her office from the David Hale matter or any of the referrals that were in her office at that point.
BY MR. CHERTOFF:
Q During the period of time, again, from mid-September of 1993 until the end of October, do you remember learning anything about the substance of possible additional referrals from the RTC that were either on the way or had arrived at the Department of Justice concerning Madison Guaranty?
A At some point in that period, I believe the FBI was saying that they were anticipating referrals,

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that the RTC had said it was going to be making additional referrals, that it hadn't made the additional referrals. So before they were made, there is no doubt in my mind that I was aware that there was discussion with the bureau about making them. And my sense of it at the time was that there was some sense that it was time to make them, so I think the FBI was aware that referrals were going to be made.
That was at the same time frame where the bureau was trying to get documentary materials from the Resolution Trust Corporation, I believe, in Kansas City then. And the bureau was interested in getting all that it could as soon as it could, and they weren't getting it as quickly as they wanted it. And I was aware of that, and again assigned John art bury to make some contacts in that period of time designed to see what the problem was so that maybe we could speed that up and get the RTC to give the bureau the documents they wanted.
Q Did you have an understanding of what the substance of any of those expected additional

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referrals was going to involve?
A I did not.
Q Did you understand, again in the period of September to October 19th, '93, that Seth Ward, an individual named Seth Ward who was a family relation of Webster Hubbell was the subject of one of those referrals?
A Not to my knowledge. What I would know for sure is, if it is in a bureau telex at that point I would have known because I was seeing the bureau telexes that were being sent to Jack Keeney and to Jerry. But I don't remember Seth Ward's name at all coming up.
Q From the time you became involved in mid-September in discussing the issue of the Hale allegations and related matters until, again, the end of October, was there any discussion that you were aware of at the department concerning whether Mr. Hubbell ought to be screened off from any information concerning this investigation?
A As I recall, Hubbell did a recusal memo and I know nothing about what generated that. But he

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recused himself and his office. And that was done in writing and that was distributed, so everybody knew that Hubbell was recused.
There is one thing that -- in that period of time, in the latter part of October 1993 where -- and I don't know if this even relates. There is no indication that this really relates to Whitewater, but Hubbell apparently knew people in the professional liabilities staff of the Resolution Trust Corporation in Washington, D.C. And, at some point in about October of 1993, he arranged a meeting to go over and visit those folks, just to talk with some of the professional liability staff.
He met with them and apparently met a group with people, I don't know who the people were, but they were from the professional liabilities staff. And in the course of that, one of the things that he mentioned was that if they were to encounter difficulties in producing -- if they were to encounter difficulties in producing material, pursuant to a subpoena or anything else around the country, that they should always feel free to let him

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know if that sort of difficulty occurred.
Q What do you mean when you say difficulties in producing material?
A In other words, if the RTC -- and I know you know this in dealing with regulatory agencies -- but sometimes when a United States Attorney's office or one of our lawyers will issue a subpoena, even one we think reasonable and properly drawn, the regulator may become involved when a financial institution is reluctant or -- certainly your people on the professional liabilities staff who were out there working through liquidators and have in mind civil suits, may not be as fast in producing information as law enforcement wants. And there are competing interests in those situations always.
Now, what he had in mind, I don't know. This was very general and it was as a result of the conversation that I had with the person from the RTC and I do not know who that person was.
Q I want to step back for a second. When you say it is as a result of a conversation you had with someone at the RTC, are you telling us you learned

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about this visit from a conversation with someone at the RTC?
A In the routine dealings with the regulatory agencies, and I deal with these guys and have dealt with them all over the government, we work with them as part of the national bank fraud working group. And I get calls occasionally from people about matters that are occurring, and one of the calls I got once was a did you know kind of a call, just an informational call, nothing particularly important or significant, necessarily. And who is this person Hubbell. See, it was that kind of a conversation, it was very brief.
After the meeting I got another call.
Q After which meeting?
A The one with the professional liabilities staff that apparently was held with people that Hubbell knew, and I don't know who those people were from the professional liabilities staff. In any event, they had their meeting and I got a call back afterwards that very generally related to the circumstances of that meeting as I've described it.

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And that's really the totality of the description of it.

Q Did you ever hear from Mr. Hubbell's office, either before this meeting or after this meeting at the RTC, anything about this meeting?

A No.

Q This meeting occurred in October of 1993?

A Yes, and I want to say I wouldn't necessarily expect to hear about it. I mean, I sent an E-mail about it to Larry Urgenson just to let him know. And frankly, the only reason I sent it at the time, it was kind of nice to know that a senior person was over at the RTC meeting with them in case something came down to us where someone might ask us about it and did we know about it, and that sort of thing. So it was purely administrative in nature.

Q Well, just so I understand or get clear on the record what the relationships were with the RTC and the Department of Justice, am I correct in understanding that in your capacity in the fraud section, you had significant responsibilities on an ongoing basis for dealing with the RTC?

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A I chaired the national bank fraud working group. As a result of that, I would have liaison with them in that regard, monthly we meet, and then have continuing contact with them, if they wanted to call me.

Q And in fact, you or people within your working group or people within the fraud section, would be people who would be called if there was an issue between a United States Attorney's Office and, let's say, an RTC office concerning the production of documents or concerning some other dispute?

A A couple of ways that could work. One, the United States Attorney's Office may go directly to the Executive Office for U.S. Attorneys. I mean, it is not uncommon. And the reason they do that is many of them are accustomed to dealing with the legal staff in EOUSA or the priority programs team in the Executive Office for United States Attorneys, and that's EOUSA. So, it wouldn't be uncommon for them to go to them and not to come us. It wouldn't be uncommon for them to come to both of us when they had some kind of an issue.

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Q Now, Mr. Hubbell's responsibilities as associate Attorney General did not involve supervision of the criminal division; correct?
A That's correct.
Q Are you aware of any component within his area of supervision that typically had dealings with the RTC?
A Absolutely not. The only dealings that I know of that he had with the RTC were in his prior capacity with his private law firm. And I think that's where he met the people on the professional liabilities staff, because of the contract that his private firm had with the RTC.
Q And your understanding, again from what had been reported to you from someone at the RTC, was, at the meeting he had at the RTC in October 1993, he indicated to the individuals who were present from the professional liabilities staff that if they had an issue or a dispute regarding the production of documents, they should feel free to reach out to him --
A Reach out to him or if they had a problem

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they wanted to bring to his attention, they should feel free to do so.
Q Is there anything else you learned about that meeting subsequently?
A No.
Q Other than E-mailing Mr. Urgenson, did you raise the issue of the meeting with anybody else?
A No.
Q Did Mr. Urgenson ever respond?
A No.
Q Did anybody else ever respond?
A He opened his E-mail, I believe.
Q Did he ever give you an answer?
A No.
Q Or say anything about it?
A No.
Q Did it seem to you odd that Mr. Hubbell would go over and make a statement like that at a meeting with the RTC?
A I am not going to characterize it as odd because I think an Associate Attorney General can do whatever they want. Looking back on it and knowing

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that this guy is a colossal crook, you know, you may think that it is rather strange, but I don't know.

Q Do you know from what -- again, I understand that you got this in a report from someone else -- whether Mr. Hubbell was there with anybody else?

A No.

Q Did the person --

MR. FISHMAN: No, you know or --

THE WITNESS: No, I don't know. This was quick and informational and at the time the only significance to me at all was that it's a senior official going over to an agency that we deal with and it would be good to know what was occurring out of that, and what was involved. So --

BY MR. CHERTOFF:

Q I take it, neither before this meeting in October nor after, did Mr. Hubbell or anybody in his office ever give you any kind of notification --

A That's correct. And again, in fairness, I don't know of any obligation anybody had to give me notice or that it would be normal that they would or

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that they would let the criminal division know and maybe they did. So, I don't attach any particular significance to the non-notice. As I understand it, it was a general and public meeting with professional liability staff members. Whether there were any private meetings on the side or anything else is certainly not known to me.

Q Do you know the identity of any of the professional liabilities staff members who attended the meeting?

A No.

Q Is there anything else you know about that meeting that you have not --

A Nothing.

Q -- related to us.

Let me direct your attention to what has been marked as Bates number 5455 for identification, through 35470 for identification. Let me ask you if you recognize that document? It says "allegation: Hale's SPI loan to McDowell" across the top.

A I recognize this document to be a document that I personally prepared in an early stage of our

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involvement and I believe these -- it is marked -- I am not sure who marked that, but I see at the bottom, it's JJN, I think that's Jim Nixon. I distributed this document to McDowell and all the team members at the time, and its purpose was simply to alert them to various information appearing in the press.

And also I want to refer to a particular page because I notice this -- I saw this document yesterday in reviewing files. On page 5 of the document footnote 3, where it says "in 1992, the fraud section was instructed to review the referral," and it continues, that's mistaken, that was in 1993.

But in any event, the purpose of this was that I had seen a number of allegations that were around, including the nine RTC referrals, and I wanted to be sure that the people that we had that were looking at this, were focusing on a wide range of potential information. So I distributed it for that reason.

Q I want to direct your attention to -- and let me withdraw the question.

My understanding is, in preparing this, you

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were specifically collecting information that was in the press, and this is not the product necessarily of your own investigation, it was a compilation --

A I personally sat down and went through newspaper articles, through whatever other sources of file information we had in the fraud section that were pertinent and put that together one day.

Q You were not vouching for the accuracy of the press information; you were just compiling it?

A Simply compiling information for purposes of the team so they would be informed.

Q In connection with that action, let me direct your attention to page 6 which bears Bates number 5460 for identification, and this is the next-to-last paragraph. It says Justice Department spokesman Carl Stern said "This was not a review conducted by Paula Casey. The information should have been communicated to the RTC months earlier. As far as I know, Paula Casey didn't participate in any decisionmaking."

Where did you get that from?

A I remember -- and I believe that is

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probably referenced right in the document. Let's see. This second -- on page 5 there is an article, The Washington Post, dated November 11, 1993. And it begins to quote that article, and I believe, looking at this, that that article came from that -- or that quote came from that article. I remember being amazed in reading that statement.

Q Why were you amazed?

A Well, because it was my distinct impression that the matter went back to the United States Attorney's Office for review. And I understood -- and in going back I put the Wall Street Journal there as an attachment because I'm equally amazed by what was stated in that, was that the matter had been closed in the criminal division of the Department of Justice, which it had not. So when I looked at that initially I saw that, in my mind at least, there was a factual mistake that was published in the newspaper.

And that the matter was in the United States Attorney's Office, as I understood it, for decision. And of course at some point, I discovered

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also that the referral back to the United States Attorney's Office somehow was still within the Department of Justice someplace for a period of time. I was equally surprised when I learned that. So, the articles where they say that Paula Casey didn't participate in any decisionmaking, frankly, was astonishing to me.

Q Was it, in fact, your understanding that the decision to decline that particular referral, C0004, was Paula Casey's decision?

A Yes.

Q Did you ever see her declination letter?

A I thought I saw it published in a newspaper article and I spent a couple of hours going through our files yesterday looking for the newspaper article. I thought it was published in the Wall Street Journal and I even asked that we do a search and couldn't find it. I thought I saw it at one point, but I may be thinking about excerpts from it.

Q Let me show you Bates number 6767 which is the declination letter and ask you, having looked at it, if you have seen it before. Take a moment to

review.
A I believe I have seen it. But, again, I thought I saw this published in a newspaper article. One thing I notice here, and it is rather curious to me, this doesn't have any fraud section indicator on it which would suggest to me that it is not in fraud section files. And I don't attach any particular significance to that. I thought I saw this in a newspaper article. At some point I thought it was published along with Banks's letters.
Q Do you remember seeing that in the context of seeing an actual letter of declination letter in the course of your various reviews of documents in connection with this matter?
A No; as a matter of fact, no, I don't. I don't -- I don't remember seeing it during the review. Again, I do remember finding it rather surprising.
Q Your distinct understanding is that the criminal division fraud section returned the matter to the U.S. Attorney's Office in Little Rock for them to make the decision?

A That's correct.
Q Let me direct your attention --
MR. FISHMAN: Do you mean that the fraud section itself returned it?
MR. CHERTOFF: Or the criminal division. I will withdraw the --
THE WITNESS: Actually let me --
BY MR. CHERTOFF:
Q Let me withdraw the question. I will make the question clear.
Is it your understanding that main Justice returned this case to the United States Attorney's Office in Little Rock for that office to make the decision on the referral?
MR. FISHMAN: When you say "this case" --
BY MR. CHERTOFF:
Q C0004.
A C0004. Absolutely. That was my impression, where the letter stated here the matter was concluded before I began working in this office, whether that was concluded by the interim or the acting United States Attorney or not is not known to

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me. My impression was, when it was finally located and it was sent, that the interim United States Attorney waited for Paula Casey to come aboard.

So, my absolute impression is that when this went back, in terms of the way organizations are structured, there was a basic question to the department, the basic issue that was recuse or not, as reflected by Moscato's memo, Anthony Moscato's memo. As a result of that, the division recommended that it go back to Moscato, that is the central fact in my mind, or back to the United States Attorney's Office.

As I understand it, it didn't, and I don't know why it didn't, but it didn't. It went back through the chain and I think Larry Urgenson apparently signed off on it on March the 19th, according to the records, of 1993.

After it went back to Frazier, it went back to Frazier for a decision.

Q On recusal?

A A decision on whether or not to accept the criminal division's recommendation, one; secondly, a

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decision on whether or not to forward to the United States Attorney the memorandum that was done by Mark MacDougall, M-a-c-D-o-u-g-a-l-l. So it went back to that office for that decision and whether they are going to concur or not. One is the recusal; secondly, the memorandum that accompanied that -- that or the Mark MacDougall memorandum was forwarded for his sending on to the United States Attorney if he felt it was appropriate to send it on. We told him you can send it on, that's fine. This is our view of it. If you want to send it on to the U.S. Attorney, feel free.

So, the posture of it plainly was the U.S. Attorney's Office had either decided to decline it or proceed with it and go back to the FBI and work it out or come back to the department and say we don't like this decision, as I suppose they could have done. So when Paula Casey received it, I wasn't in in her office, but that was the posture.

So, again, when it says, it was concluded before I began working in this office, it was not concluded in the fraud section of the criminal

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division or in the criminal division, whether it was concluded somewhere else up the chain, though, is, I suppose, a possibility, too. But I don't know that and I don't believe that.

Q To your knowledge, within the main Justice it was not concluded?

A That's correct.

Q And it was returned to the U.S. Attorney's Office in Little Rock at some point with a decision to be made in Little Rock concerning what further action would be taken?

A That's correct, that's right.

Q Was there ever --

A And I notice one other thing though that, in the letter, and the letter is a little unclear to me, where there is a concurrence with the memorandum that was prepared in the fraud section on the face of Paula Casey's memo or letter. She in her last paragraph says "although I am declining to take further substantive action," I don't know what she meant by that, whether it is simply an acknowledgment that I am the United States Attorney and I can

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proceed with this or not, but I have looked at the fraud section memo, I have reviewed it or whatever she has done, and has said I am not going to proceed with it.

I don't know what precipitated the letter. I don't know what precipitated the precise wording in the letter, which on the face of it, I don't totally agree with. But it definitely was there for a decision in that office.

Q When you say "definitely there," you mean definitely in Little Rock?

A In Little Rock.

Q Now, this letter, this declination letter is dated October 27, which is a little less than two weeks before Ms. Casey recused herself?

MR. FISHMAN: Actually one week.

BY MR. CHERTOFF:

Q About the 5th, so it is about 10 days. As of October 27, you understood that the Hale allegations involved some allegations relating to Whitewater?

A Yes.

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Q And to your knowledge, was that fact known to Ms. Lewis that the Hale allegations --
A To Ms. Lewis?
Q I'm sorry, to Ms. Casey.
A That they involved -- I don't know what she knew. I just don't know what she knew. I notice that the criminal referrals from the Resolution Trust Corporation, its nine criminal referrals, came in to Paula Casey's office right about the time she declined the one referral.

In addition to that, the Little Rock FBI was reporting to her office on everything they knew, so presumably she was following that. Further, she was dealing with David Hale's lawyer, and was reading the newspaper; and I have forgotten what some of the articles were in that period, but I think they were pretty expansive. And I don't know whether the reporter had talked to her or not, the same one that apparently talked to Irv Nathan.

Q Was there ever any discussion at the time, that is to say in October or November of 1993, about Ms. Casey's declination of the original referral for

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C0004?
A Discussion? Not that I am aware of, not that I know of. I remember when I first became aware of the letter, just commenting generally about the nature of it, but I mean it was obvious that she had declined, C0004. And the way I see it is that her office declined C0004, however they wanted to phrase it.
Q What was the comment -- what were the comments that you made when you first became aware of --
A I am speaking generally. I just know that I would have reacted and said this doesn't seem quite accurate.
Q Let me now direct your attention to the period after Ms. Casey recused herself. At that point, did the fraud section team with Mr. McKay and Mr. Nixon become involved in conducting the investigation of the case from a prosecutorial standpoint?
A Yes.
Q And you supervised that in your capacity as

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principal deputy head of the fraud section?
A Directly and indirectly. Some of the supervision I assigned to John art bury, who was a deputy section chief.
Q In the course of that assignment of yours after Ms. Casey recused herself, did you have occasion to have discussions with Mark Stevens at the Small Business Administration?
A Absolutely.
Q And who was Mark Stevens, in terms of what was his position at that time?
A It is in the file memo that I did of the contact with him, the initial contact, but my recollection is he was with the Office of Inspector General or legal counsel's office.
Q What was the reason you initially -- and feel free to, if you need to refresh yourself, I have the memos I would be happy to provide them to you -- what was the reason you initially got in touch with Mr. Stevens?
A There were a couple of things that were going on about the same time, so, one maybe before

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the other, but I have a good memory, or rather clear memory of some of the activity that occurred in relation to Stevens. One of the reasons we were in contact with him early was with respect to the SBA aspect of the Hale referral that had to be explored and examined. Another was that I learn from Stevens that documents had been given to various -- I think David Kendall of the White House staff.
Q David Kendall was just -- to help you locate this in your mind, David Kendall was at Williams & Connolly. There was --
A I am not thinking of David Kendall.
Q Neil Eggleston?
A Neil Eggleston, right. And again, I will refer you to the memos because at the time I did memos of all of this and the memos are, to the best of my knowledge and belief, accurate representations of what was occurring.
But anyway, the documents had gone over to the White House at that time and we wanted the documents. We wanted to know why the documents were over there. We wanted to know who was discussing the

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documents with whom. We wanted to know what kind of contacts David Hale's lawyer was having with people in the White House. And part of the reason for that was we had read newspaper articles that were reporting on this stuff, and we wanted to know why.

Bearing in mind, again, that from your view of it, at that time there were questions about Whitewater that were significant, and we really wanted to examine it. So one of the things we wanted back was the documents. My feeling and the feeling of the FBI agents who were working the case at the time was that the documents went to the White House at the time. And we later learned that part of the reason for that was they were of Congressional interest and the White House counsel's office simply wanted to know what was going on. They had contact and communication with the SBA's general counsel who didn't see a problem with sending them over without notification of law enforcement or anybody else, and sent them over.

I think all on the face of it, unexceptional. Our concern was that we did have an

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investigation going on and material was going out without our getting it and it was in the hands of people who at the time might be in a role of counseling or advising people. And these were governmental documents and that there should be an appropriate procedure and a matter of record in the handling of the documents and that they did not belong in the hands of a staffer, so we pursued that. And ultimately, the documents were returned to the Small Business Administration, and ultimately, we had the people involved interviewed by the FBI.

Q Who were the people who were interviewed by the FBI?

A Eggleston is one and there were others.

Q Was Mr. Lindsey interviewed?

A I believe so.

Q Was Mr. Nussbaum interviewed?

A I don't -- yes, I think Nussbaum was interviewed, too, I believe. I stand corrected if not, but I believe we had him interviewed, too. I know I wanted him interviewed.

Q Were there other people in the White House

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counsel's office or in the White House who were interviewed?

A Not that I remember. But again, that is readily ascertainable from the bureau.

Q Were 302 interview reports written up?

A Reports were done.

MR. CHERTOFF: I guess I have to -- I think we have sent over a letter request encompassing this -- I am addressing myself to Mr. Fishman -- but I don't think we have received such reports. There is a letter request. I'm certain it has been sent out.

MR. FISHMAN: I haven't seen it if it has been sent out. All of the documents that are in the possession of the FBI, you have a complete production, as I am advised by the FBI, with notations as to which documents were not produced at the request of the independent counsel. You have not asked us to revisit those -- that withholding to my knowledge, I am happy to do that and I don't think we need to discuss it on the record. Can we go off the record for a second.

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(Discussion off the record.)

MR. DINH: Back on.

THE WITNESS: You mentioned 302, my recollection is they did the interviews and they quickly telexed the results, whether they had a 302 or it remained in a telex form, I am not sure, but it is in some form and it was done formally.

BY MR. CHERTOFF:

Q Did you ever learn the circumstances under which these documents were transmitted to the White House, and what happened --

A My impression was it was totally innocent. And you had White House staff, who were interested in tracking what was going on on the Hill, for -- because it concerned the White House. So, that when a request for documents went over to the Small Business Administration, they wanted a set of that documents and that a set of those documents was prepare. We asked them for copies with handwritten notations on and any and all copies.

Q You asked them, you asked the White House, the White House folks, the bureau was asked for any

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Xeroxes and we wanted all of that, too, to make sure we had it because we wanted to know if any notations had been made about anything. And we were unable to get any of that.

I believe that Mr. Eggleston said he made some rough notes at some point but shredded the documents but turned the rest back over to the Small Business Administration, but I would -- I really want you -- if you are going to rely on it, get the record. We will look at that. I want to track back over this issue with the SBA documents. Let me withdraw the question.

My understanding, from what you've told me, is that the House committee had requested documents in connection with the SBA investigation --

A That's my recollection.

Q In response to that request, am I correct, that the SBA sent over a letter, and then there were accompanying documentary exhibits?

A That's my understanding.

Q And the accompanying documentary exhibits included investigative work product that the

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Inspector General of SBA had generated?

A I don't know in that's true or not, but the documents are -- they've got them. I just don't know.

Q Were some of the documents confidential, to your knowledge?

MR. FISHMAN: Confidential to whom?

BY MR. CHERTOFF:

Q Confidential law enforcement information or investigative information to the SBA, the documents sent to the House.

A I don't remember what was in them. I don't remember being struck by the notion that they were confidential documents.

Q Were they public documents? Was the content of the set of exhibits sent over to the House composed entirely of public documents?

A I don't know that. I believe they were documents that were agency documents, but documents they felt they could share with the Hill.

Q Why was the decision made by the department and the FBI that these documents ought to be

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recovered from the White House?
A As I recall, there was a newspaper article about a telephone call from Hale's attorney, Lindsey, and there was some indication of communication between Hale's lawyer and White House staff of the -- sort of a substantive nature. And then there was this indication of taking documents from the Small Business Administration, and to us the circumstances were a little unusual. And we wanted to be sure we knew what they had taken. And that we would know it ourselves. And that if, in fact, there were notations on these documents, it might relate to conversations or contacts these people had that were significant, we wanted that, too. And we wanted to be sure that there was a process in place if an agency such as the Small Business Administration that was conducting some investigative work in that period was communicating with law enforcement, if and when it had requests for materials from anybody who might be of interest to the investigation and might be a witness in the investigation.
And at that time, Mr. Eggleston and

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Mr. Lindsey, both as I recall, were seen by us as potential witnesses of contacts and communications of Hale and his lawyer. And we did want to know what Hale's lawyer was saying to these people. We didn't know. Or what -- you know, what those commun --
Q Did you ever ascertain exactly how it was that the White House requested the documents from SBA?
A I believe that one of the documents you have of my contact with an SBA employee reflects that. And I don't remember exactly what that was, but I believe that what he said was that the general counsel had represented that it was an inquiry from White House staff, again related to the Congressional interest and the White House staff wanting to be informed so they wanted to see the documents. And that's all I remember, independently.
Q Was it the House Congressional liaison office that gave the request to the SBA?
A My recollection is there was a contact between Eggleston and general counsel of the SBA. I believe that's in the memo or one of the memos. I

haven't seen those in a while, but I believe that's true. And I have a recollection, too, that it was a higher level communication than just the Congressional affairs office. That's my memory of it.

Q Higher level?

A Or at least a different organization.

Q That it was from the White House counsel's office rather than the Congressional liaison office?

A That's my recollection.

Q Do you recall, as you sit here now, what were the materials that were actually transmitted to the White House?

A No.

Q Do you know whether the actual criminal referrals, actual SBA referrals were part of the --

A Part of that package, I don't believe they were. Not the package that came back. I don't believe that.

Q Not the package that came back from the White House?

A Right. I didn't see the package that came

back from the White House, either. That was apparently redelivered by Eggleston to this fellow.

Q Stevens?

A Stevens. Directly on a Sunday.

Q And then Stevens later communicated that he had gotten everything back?

A That's right.

Q Was there a receipt or was there paperwork that accompanied the original transmission of the documents to the White House and then the return?

A I don't know. My recollection is Stevens said he saw Eggleston on the street and Eggleston handed him the documents and he took them inside.

Q He saw him on the street?

A Met him on the walk.

Q Where?

A Outside the IG's office, I believe.

Q You mean outside the SBA IG's office?

A Right.

MR. FISHMAN: I don't think he means others, a random encounter.

THE WITNESS: I think he said I will give

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you the documents back, it was hurried, and the fellow drove up and Stevens was waiting for him and he said here are the documents.

BY MR. CHERTOFF:

Q Did Mr. Stevens ever explain why the documents weren't returned with a messenger or somebody bringing them back and delivering them to the office?

A No. And I don't want to speculate why Eggleston might have thought he wanted do it himself. Certainly we were indicating that we wanted the documents.

Q Did you ever -- were you involved in any or -- let me withdraw the question.

Were you aware of any investigation, up until the time that Mr. Fiske was named, concerning Mr. Coleman's contacts with someone from the White House about the Hale matter?

A Randy Coleman?

Q Yes.

A I was sure interested. That's what I was talking about earlier.

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Q Was there any investigation that actually ensued?

A That's why we interviewed Lindsey, partly.

Q Do you remember what Mr. Lindsey said, if anything, about that?

A No, I don't remember getting anything incriminatory or exculpatory or of particular import other than his recollection what it was about. And I just don't remember what he said, but we do have a written report of that contact with the bureau.

MR. FISHMAN: I will say this now, any provision of 302 reports or anything like that will have to be discussed with the independent counsel before that happens because Mr. Hale is still cooperating with them as I understand it.

MR. CHERTOFF: The 302 of Hale --

MR. FISHMAN: I understand. Although the department has a great willingness to cooperate with the committee, we also are mindful that we don't want to interfere at all with what the independent counsel is trying to accomplish. And we will have to have further discussions with the committee and with the

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independent counsel about the nature of the request.
BY MR. CHERTOFF:
Q When the FBI sought to reclaim the documents or recover the documents that had been transmitted to the White House by the SBA, did they do so by way of subpoena?
A No.
Q Was it an oral request?
A I talked directly to Stevens and said I wanted it done.
Q And Stevens then --
A To the extent we could do it and I thought there were communications going on in that period of time, too, between people much higher than I am in the department. Maybe Phil Heymann. With the White House counsel's office, as well. And I'm a little hesitant here because I am not sure. My sense is, though, that they had some contact, too, on getting this done.
And what ensued was the return of the materials. And then later when the FBI interviewed them what I wanted them to ask was did you give

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everything back, do you have copies of what you gave back, do you have anything with written notations on it relating to what you gave back. That sort of an inquiry was one of the things that I thought was something that the bureau should do.
Q I am going to show you what has been marked as Bates numbers 410 and 411 and ask you if you recognize the handwriting?
A Well, I'm not sure. I think it is John art bury's and I am looking at JDA at the bottom which reflects that it came out of his files. So I believe -- I believe this is John's, his notes.
Q Let me ask you whether you recall a specific conversation with Mr. Stevens after you had learned about the documents having been furnished to the White House counsel's office in which he indicated -- let me withdraw the question.
Do you remember an occasion after you had discovered that the documents had been transferred to the White House when Mr. Stevens tried to reach you to talk about this, and you were on the phone and instead Mr. Art bring took the call and later

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reported to you about it?
A It is possible, but I don't remember that.
Q Let me see if I can refresh your memory by reading you, as best I can, from Exhibit 410. For identification, it says "tel with Mark Stevens dated 11/22/93." As best as I can read it, it goes as follows: "Mark Stevens called GAC on telephone so I took call at airport" -- "so I took call at airport in Memphis on way to Dallas. Talked GSGAC Friday yesterday in office at 9:00 a.m. Egg," which I presume is Eggleston, "called," something I can't read, "talked to people at DOT Friday. Wanted to get," again I can't read it.
A DOT.
Q It says "DOT." Now maybe "DOJ," but looks like DOT?
A It is DOJ.
Q "Friday wanted to get," something I can't read, "back as soon as" -- I think "make docs back as soon as possible" and some words I can't read, says "bring over" something "re: copies." Then there is a reference here to a "copy of the last exam report

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through 3/2/93," and it says something about shredded, also something about notes, and then, "what do with docs took to office in box, put under his desk." Does this ring a bell?
A Sure, I mean what that refers to in my mind is the return to Stevens on the street. The notion of shredded in my mind would mean that when Eggleston gave him documents that Stevens had said, words to the effect, do you have any copies with notations on them or are you returning all of the materials. And that the response he got from Eggleston would be, well, he shredded a document or documents when he returned them.
And that what was happening here was, Stevens was calling back to report what had occurred, and in reporting it, talked to John. And I was on the phone with somebody else when it came in.
Q Did Mr. Stevens, to your knowledge, ever ask Mr. Eggleston to furnish any copies of memos or work product he may have generated based upon the SBA materials --
A I believe so. I believe that's one of the

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things we asked Stevens to ask him for.
Q Was anything ever furnished from the White House?
A No, my recollection is -- and I believe that was covered by the bureau, too -- that he said no, the only thing he had done was made notations on a document or something and that was shredded, but that nothing else was produced.
Q I am going to show you what has been marked as FBI 1973, also JME 3945 for identification, and again it is a handwritten note, dated December 3, 1993. And I will read this to you for purposes of whether you can tell me whether you recall a conversation you had with someone from the FBI from which this copy came --
MR. FISHMAN: What is the number?
MR. CHERTOFF: FBI 1973, JME 3945.
BY MR. CHERTOFF:
Q It says "Allan Carver" and it says "Wade, someone from DOJ told White House people need to co-op with FBI and talk to the FBI. WH," presumably White House, "said would take it under advisement."

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What, if anything, do you recall about a conversation you had with anybody concerning that subject?
A I have a recollection of talking generally about -- and that's where I think Phil Heymann had stepped in, to try to move this process along -- of getting interviews of the White House staff, and getting, I thought, the documents back in that period but it may have been the interviews. There was a sense that this should be done right away; sooner, not later.
And there were discussions going back and forth in that period about whether, and if so, under what circumstances and I think one of the circumstances that was discussed was to have one individual in the White House representing another individual and him interviewing somebody, and that was totally unacceptable to me and it was totally unacceptable to Rick Wade.
So we were trying to work out an arrangement that would get the interviews and be a reasonable accommodation of the interests, of the concerns of the parties. That's what I think that is

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about, and that was part of what was going on in that period. I had a number of contacts with Rick Wade in that period, conversations.

Q Were you actually dealing with the While House in trying to work this out or was someone else from the department dealing with the White House?

A No, I was not dealing with the White House at all.

Q Who was dealing with the White House?

A I don't know from personal knowledge, although again it is my impression that Phil Heymann talked to them directly.

Q Your recollection is there was a period of time when there was some disagreement between the White House and the FBI concerning the manner in which these --

A I don't think it got to a disagreement. Again, I think what it got to was some discussion to the effect that we want interviews, and it is important to have them and we want to get them scheduled and get them done. And we want them under conditions that will be credible and that will be in

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accord with the usual way the FBI does interviews.

And in dealing with people who are not totally accustomed to that environment, as you do when you are dealing with people all the time in investigations and trying to work that out, so it was that sort of thing. I don't see it, in my mind, as a contest or an antagonistic situation. But I think there was apparently a sense that it should be done a little differently than the way we wanted to do it, and we wanted to do it professionally and in accordance with the standard operating procedure of the FBI. It was as simple as that and we weren't going to do it any other way.

Q Do you know the identity of any of the people who participated in discussions between the Department of Justice, including the FBI on the one side and the White House on the other, concerning the manner in which the interviews would take place?

A The FBI talked with people, I know, during that period.

Q Who in particular?

A I don't know, but they have done paper on

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them. I mean -- in trying to schedule the interviews, for example, and going to people to talk to them about getting the interviews set up, I don't know if it was Rick or somebody else, just exactly how that played out again, but I do know that all of that is -- it is record information.

Q And your impression is that Mr. Heymann also at some point had to get involved?

A That's my impression. I don't know whether he had to get involved, but he did get involved and there was a sense of getting things done now and not negotiating over a protracted period of time, and that it might need that sort of involvement simply to move the process along.

Q Did there come a time when you learned that there had been discussions earlier in 1993 between someone from the SBA and someone from the White House concerning the Hale investigation?

A No. Personal involvement in that? Not that I know of.

Q Did there come a time that you learned --

A Maybe at some point during the

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investigation we saw that in the newspaper or heard that, but I have no memory of that.

Q Let me confine you to the time that Mr. Fiske was appointed.

A Right.

Q I take it after Mr. Fiske was appointed you no longer participated in the investigation?

A That's correct.

Q Up until the time Mr. Fiske was appointed, did there come a time that you learned the administrator of SBA had had conversations with the then-chief of staff of the White House concerning the investigation?

A Not that I have any recollection at all except again, if anything was in the newspaper, then I'd learn it; or if anything was published, then I learned it. But I don't remember that ever being a subject of discussion with anybody.

MR. CHERTOFF: Excuse me just a moment. Just a couple of quick areas. I should be done in five or 10 minutes.

BY MR. CHERTOFF:

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Q First let me ask you, did there come a time that you learned that Ms. Casey had complained about her treatment by Department of Justice officials in connection with the issue of recusal?

A No.

Q Secondly, were you involved in negotiating the subpoena with Mr. Kendall for the turnover of the Clinton documents to the Department of Justice at the time that the department was handling the investigation before it was turned over to Mr. Fiske?

A I was, and I led it.

Q Would you briefly for the record, give us your description of what occurred in the course of those negotiations?

MR. FISHMAN: With the caveat, of course, ultimately to the extent a subpoena was served and requested certain things, that there may be 6(e) implications to how far he can go in discussing that.

MR. CHERTOFF: I understand there is a limit to that.

THE WITNESS: I looked at the newspaper articles at the time to see what was released and I

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noticed that the White House had listed a rather comprehensive listing of what was produced pursuant to the subpoenas. So I am comfortable with talking generally about it and I will tell you what I know.

In my conversations about getting documents, one of the things that I wanted was I wanted materials that Mrs. Foster had received from the White House, and I wanted material that Mr. Kendall had received from the White House. And as I recall, the published press reports at that time had signaled that things were being taken out of the White House, so we wanted them.

In discussing how best to do it, one approach was to approach counsel and simply ask them for both nonprivileged material and privileged material, and ask them to waive any privilege they might otherwise claim. The thinking was they probably would waive any privilege they might have.

There were discussions in that period of time with Joanne Harris and Merrick Garland that I recall. As I recall, at one point Joanne Harris had mentioned she had had a conversation with Janet Reno,

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a brief one, who apparently had indicated some interest in making absolutely certain that these sorts of material were acquired expeditiously. That's my recollection of it.

Now, as a result of that, one of the ways to do it under consideration was to have a subpoena available if necessary. That was discussed initially. It was decided instead to go ahead and craft a subpoena. This, I might also add, followed a telephone call from Kendall to Joanne Harris where apparently he was proffering his cooperation, as she related it to me.

So as a result of that, I had subpoenas prepared. One of first subpoenas directed witnesses not to talk to anybody publicly, and I instructed our staff to delete that. I don't know if that was unique to Little Rock or not. Told them it was inappropriate, they have no legal authority to direct the witness in a subpoena that they can't produce.

I talked to Kendall about getting privileged and unprivileged documents on the telephone. Told him we had a subpoena for general

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documents, but I wanted more than that, I wanted documents outside the scope of the subpoena, or we could broaden it. And I wanted privileged documents as well and wanted a waiver if they could do it and wanted to know what his position was on that. He said he would check with his client.

He later came back and said no, he wanted a subpoena covering everything. From our point of view, that was fine. We wanted the documents. We frankly were going to get them through cooperation, with the subpoena. Apparently from what I read in the paper later, one of his main interests was to be sure that we were covered by a subpoena and couldn't publish his documents in The Washington Post the next day without running the risk of 6(e).

As far as we were concerned, he had no protection at all. If someone wanted the documents from Kendall or they wanted them from the White House, obviously, 6(e) didn't attach. And they were perfectly free, anyone who wanted them, to go directly to Kendall or directly to the White House and request the documents.

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I had a very similar conversation with Lisa Foster's attorney at the time, sort of to the same effect.

BY MR. CHERTOFF:

Q Were you involved at all in the crafting of the Attorney General's order that established the terms and conditions of the appointment of the independent counsel, Fiske?

A Yes, I was. There were a group of us that worked on that when it came up. It was -- we met in the public integrity section. I think Lee Redec, R-e-d-e-c; Joe Gangloff, I was there. Jerry McDowell was there at one of the earlier meetings about crafting it. And the idea was that the independent counsel should be given the broadest jurisdiction an independent counsel could have.

Q Did there ever come a time when you became aware of any suggestion from the White House about limiting the scope of that mandate?

A Not that I know of.

Q Finally let me ask you, I guess we've developed in the record evidence that you and Mr. Art

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bring had some contacts with the SBA concerning this issue of the documents that had been transmitted to the White House?

A We did.

Q Was there anybody else specifically that you recall that had interaction with -- from the Department of Justice, that had interaction with either the SBA or the White House on that issue?

A Well, I think the FBI -- I think we had a meeting with Stevens initially where we sat down, and I thought there were a couple of FBI agents mentioned in my memo where we all met with them to see what they had to say.

Q Does that include Mr. Wade?

A I don't remember. I think Jane Erickson, and she was one of the agents who was involved at the time.

Q Was Mr. McKay revolved in these conversations?

A Don McKay?

Q Yes.

A No.

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Q And apart from what you've told us about your belief that Mr. Heymann may have been involved, is there anyone else in the higher reaches of the department, that is to say superior to your position in the department, who you have reason to believe were involved in discussions about this?

A No, not -- what was the tail end of the question?

Q That you have reason to believe were involved in discussions about this.

A Reason to believe, no. I mean, it would be involved -- in the ordinary course, Jerry McDowell would be aware of what was going on. He would not be not contacting the White House. Indeed, the appropriate contact to the White House in those kinds of things would be the office of the Deputy Attorney General and not the criminal division.

MR. CHERTOFF: I have nothing more.

MR. FISHMAN: Let's take five.

EXAMINATION

BY MR. IVEY:

Q Good afternoon, I have a few follow-up

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questions I would like to ask.

A Very well.

Q Hopefully they won't take too long.

Why don't we go back to the subpoena issue.

A Okay.

Q At about what time did the negotiations for this subpoena take place?

A I am going to refer now to the chron because I think it's got a notation on that. Not really.

Right around Christmas, shortly before Christmas. If you look on page 7 of the chronology, that may help some, on GAC 2. And the date of the actual conversation, one of two conversations that occurred with Kendall initially was December 23, 1993.

Q Thank you.

Now, does that correspond to the memo to the file with your signature on it? I believe it is 2493 is the Bates stamp number. I can't read the -- I'm sorry, it has "Subject: Thursday December 23,

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1993 coordination relating to acquiring various materials. He removed from the White House office of Vincent Foster," is that -- (handing)?

A That's correct.

Q Just with respect to the title there, the subject, you mentioned, within the memo conversations with Mr. Kendall?

A Yes.

Q Okay. Now, Mr. Kendall was the lawyer representing -- not the Foster family; is that correct?

A He was representing the White House. As I understood it, there were two categories of documents here that came out of the White House that we were interested in. And one of those categories was documents that went to Lisa Foster through her lawyer that were meant for her. And then there was another category of documents, that went to, as I understood it, the counsel for the First Family.

Q Just so the record is clear, why were you interested in those documents? What was the --

A Well, they were a source, we thought, a

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potential source of material information relating to allegations that were of interest to us in our investigation. For example, Whitewater Development Corporation, that was an interest to us, and matters relating to it because of Vincent Foster's relationship with the First Family, there was potential that information would be there.

We didn't know whether it was there or not, but we wanted to see the documents, as investigators, during the investigative stage, to either confirm that there was such information or to find that there wasn't, and we wanted to do that ourselves.

Q In other words, you thought there was a potential, a possibility --

A Like any investigation.

Q -- that some facts that may have been relevant to an ongoing investigation --

A That there was a possibility that they may contain material that was relevant to the investigation, that was enough for us.

Q Now, how did those negotiations proceed? I mean just in brief? What did you --

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A Let me see. I can answer your question, if you want, pretty quickly. I mean, there were discussions, as I stated earlier in the deposition, that I had on the 23rd, with a view towards getting the documents. The idea was to get all the documents that we thought might be of interest to our investigation, which could include some privileged material.

And we really wanted to try to work out a waiver of any documents where privilege might be claimed so that we could get past that and see the documents ourselves. That was in our thinking.

So it was simply to say we have a desire for these, we have a subpoena for you, for material that's rather specific and we want to go beyond the subpoena and we want to get additional information from you, too, if we can, of a privileged nature, what do you think? Or will you do it?

And that's what precipitated a response that, well, we want to cooperate, but I've got to check. And then coming back saying, well, really I'll respond to a subpoena. So, I will give you the

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documents if there is a subpoena for the documents. And what I read from that is, without a subpoena -- anything out of sight of a subpoena you are not going to get.

Q And the tenor of those discussions --

A The tenor was cordial, professional and totally ordinary. In terms of dealing with defense attorneys, there was nothing unusual about it, nothing strange about it, nothing that would have advantaged the other side, if you will, in any way, shape or form, that I can see. Or anything, again, out of the ordinary in dealing with somebody that you are trying to negotiate getting documents from.

Q So I take it you negotiated subpoenas with defense attorneys in other circumstances?

A Yes, and our people do it routinely.

A typical example is subpoenas that are addressed to financial institutions for records of their depositors. There are very often negotiations that go on over a period of time about how you are going to have the production and alternatives to actual production and that sort of thing. And it may

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be, too, that documents that could be given to you without a subpoena will be withheld by a financial institution that wants a subpoena because they want the protection of the subpoena from what they think might be a lawsuit, or they just simply want the documents protected from public disclosure, which very often is a legitimate interest of somebody providing information to federal criminal law enforcement.

Q You also mentioned that you didn't feel your investigation would be disadvantaged in any way?

A Certainly not from a subpoena. There could be no adverse impacts on us at all, having a subpoena served on somebody. It would be more convenient in some instances to get things without a subpoena, but we use subpoenas all the time.

Q Did you feel that there was any intent to block your efforts in obtaining these documents at all?

A Block, no.

I wouldn't use that word at all. I think that at some point during the discussions there were

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discussions about whether or not privileged materials would be provided at all. Those discussions continued, and I think were continuing about the time that Robert Fiske became involved, at which point the discussions -- I don't know what happened when Bob Fiske became the independent counsel at that point.

Q Let me read some language to you, there is no Bates stamp number on this, but -- I'm sorry, there is FBI 2189. And I don't believe this is the document that you produced, but I wanted to see if you agreed with this statement. At the bottom there are initials TTK, which I assume refer to Tom Kubic and Larry --

A It is possible.

Q In any event, the paragraph I wanted to read was this: "The agents did not delay the issuance of the subpoenas and did not negotiate any language changes specifying what documents should be sought. It should be noted that Kendall did not tell DOJ what should or should not appear in the subpoena." Is that a statement you agree with?

A Yes. I don't have any problem with that.

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Kendall isn't telling anybody what to put in a subpoena. Kendall is saying if you want documents, you've got to have a subpoena. You know, so if you want material from me, you've got give me a subpoena, then you can have the material. And I will only give you what is encompassed by this subpoena.

Q Let me put it this way: The scope of the document request in the context of the subpoena you ultimately gave to Mr. Kendall, was that scope determined by the Department of Justice?

A Yes.

Q Okay. Was there --

A In other words, Kendall could sit there -- but look, Kendall could say I am not going to give anything unless you do, but the people who make the decision on what's going to be in the subpoena is not Kendall. Kendall did not dictate, for example, to me what's going in a subpoena.

Q That's what I am asking.

A It would be a cold day in the hot place when a guy that I am dealing with -- I am serious -- would be negotiating the terms of the subpoena or

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telling me what to put in the subpoena, unless I wanted to define the scope accurately and I could get help from the person I am issuing the subpoena to and they could outline for me what I need to subpoena in order to get what I want. I mean, that's the way where an outsider could influence the subpoena.

Q That would be another example of negotiating with the --

A Sure. I don't know what I want, maybe in dealing with a particular bank. The bank may know better than I do what records I might need in my investigation and they might help me shape the content of my subpoena. That's one example.

MR. IVEY: Off the record for a second.

(Discussion off the record.)

MR. IVEY: Back on the record.

BY MR. IVEY:

Q You also mentioned that you didn't think that there was any protection at all accorded to the White House or Kendall, I believe?

A Through the issuance of a subpoena.

Q Through the issuance of a subpoena, yes,

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because Rule 6(e) of the Federal Rules of Criminal Procedure covers secrecy of grand jury documents. It applies to prosecutors, it applies to witnesses, it does not apply to witnesses -- you said it applies to witnesses --

A It does not apply to witnesses at all. If I subpoena somebody and they are a witness, they are not bound by 6(e).

Q To make this crystal clear for the record, the Department of Justice is governed by the restrictions of 6(e)?

A Sure.

Q But in this case, the witnesses who provided the documents --

A They are not.

Q In other words, Mr. Kendall and the White House, Mr. Hamilton, the Foster family are not?

A That's correct.

Q Okay. So, if someone wanted to seek this information by a subpoena or some other document, they could also go back to those people and get the information?

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A They could, if they gave them -- and they would give them to you, but, yes, they would be a possible source of the material. That obviously assumes that they still either have the originals or they have copies.

Q And when you say it didn't prejudice or undermine your investigation at all, is that one of the reasons that's connected to that or is it a separate matter?

A I am really not sure what you are asking or what you mean.

Q I just wanted to see if this links up to your prior statement about the subpoena -- issuing the subpoena not undermining your investigation.

A Issuing a subpoena hardly ever can undermine your investigation. In one sense it can protect information more readily and have an influence on agents and people working for the government to keep the information confidential. I mean, that's one advantage of it potentially. But I can't really think of a way that -- certainly not in this context -- that serving a subpoena and receiving

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documents by subpoena could do anything but advance an investigation.
Q Okay.
A You've got a witness who says I won't produce them without a subpoena, you say you are going to get a subpoena.
Q Let me follow up on that in this way: With respect to the investigation that you had ongoing, was it better for your investigation to keep this information confidential while your investigation was underway?
A That particular information?
Q Yes.
A I think you would find some agents and some prosecutors who would hope that nothing would be in the public domain during an investigation. In other words, there would be no Congressional investigation, there wouldn't be any other sort of investigation, it is always easier for us if we have information that's not in the public domain, but the plain fact of the matter is that we live in a world where very often it is and we understand that. There are very often

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parallel Congressional proceedings, as we all know.
Q Boy, do we know.
I wanted to ask you a question about leaks, press leaks.
Were there ever any discussions of press leaks regarding the Madison referral, that you were aware of, inside the Justice Department?
A I don't know of any in the way you phrased the question. There were discussions and conversations about questions of leaks, and at one point I had a conversation with Jane Erickson and the FBI, I believe, about whether they saw any way at all to determine the source of leaks, generally, realizing when I asked the question that finding the source of leaks can be virtually impossible. Nothing came of that.
Q Do you remember what prompted that conversation --
A Yes, picking up the newspaper, seeing that some unidentified source, pardon me, from the government was providing information to the press.
Q Do you recall what the information was?

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A Not specifically, but I know in The Post in that period of time they would be talking about somebody from the government is talking about an investigation that is being done by the SBA or the FBI is looking at something. They are very general. They were in the papers at that period of time. I didn't like it.

Q Was there a discussion about the possibility that Jean Lewis was involved in those leaks?

A Not with me. No. Although her name came up in that period of time because of the relationship, I think, with the United States Attorney's Office, and the FBI locally in Little Rock, and the Kansas City RTC in that period. I sensed that there was some tension.

MR. DINH: Just to make sure for clarification, when you are talking about leaks, you are talking about the release of confidential information, not merely talking to the press?

THE WITNESS: There was no discussion or focused discussion or anybody who knew or -- that I

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knew of -- anybody illegally leaking or improperly leaking. It was just reading the newspaper articles suggested that people might be leaking information from within the government someplace. FBI, RTC or elsewhere. Only suggestions.

So, I wanted it to be very clear to the bureau that I was concerned about that sort of thing, and to the extent that there was a way to get at it and identify anybody who was leaking within the government, my focus really was in our own shop, that that would be just great, if we could identify anybody, but we never did. And as far as she was concerned particularly, she was far away from my thinking at that time.

BY MR. IVEY:

Q You mentioned some tension, I believe, between I think you said the RTC?

A It is not unnatural for investigators in trying to get documents to want to get them sooner than they get them and that's what I mean. The bureau in Little Rock, as I mentioned much earlier in the deposition, they wanted to get speedier action on

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getting documents that they were trying to get from the RTC.

Q What else did you learn about that? Did you find out what types of documents, or what --

A These were subpoenaed material and they wanted to follow up on it. And I took some action to try to work that out, where the parties would be working closely together, and working well together. One of the tasks that I assigned to Don McKay was to try to work that out by visiting Kansas City, and at this time sitting down with people there from the RTC and having the bureau sit down with them. Just bringing this group together as a team.

Q About when was that, do you recall?

A Early in the investigation. I mean, early after Don got assigned. It was one of the first things he did.

Q So probably November '93?

A Probably November. He went down to Little Rock November 9, 1993. That was his first trip.

Q So he went to Little Rock first and then you said to Kansas City?

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A He went to Kansas City on a day trip or overnight at one point at my request to try to work with the Kansas City RTC and to develop a relationship with them, or the bureau and the Kansas City RTC were working harmoniously and my impression was they very soon were.

I had contact with a person or persons in the RTC headquarters at that time, I believe it was Jim Dudine, along the same lines to say, look, maybe you can talk to your folks in Kansas City and we can bring everybody together working productively.

Q I believe that's D-u-d-i-n-e. Did you ever learn what the problem was with respect to RTC providing the documents?

A I don't know that there was the problem. I think it was their own internal review mechanism within the RTC. Typically, they will review documents that have been requested from law enforcement to determine whether or not they should invoke any privilege or whether or not there is some other reason why they should not provide the documents. That's part of their review process, or

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should be, within the agency itself. Now, that can take time and that can generate some frustration on the law enforcement side.

Q Did you have any direct conversations with anyone in Kansas City?

A No.

Q Did you have any direct conversations with anyone at the U.S. Attorney's Office in Little Rock about this?

A I don't know. I think I had some contact -- well, I know I had some contact with Don, but on this subject --

Q That would be Don Pettus?

A Don McKay. I don't remember talking to anybody down there. I may, during the course of our involvement in it, have had a conversation with some of these people. I just don't recall it.

Q Did you ever speak to Irons or Pettus, that you can recall, about this matter?

A I don't know. I don't remember any conversation with them.

Q And with respect to your conversations that

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the Department of Justice -- I take it -- you mentioned asking the FBI, I think it was Ms. Erickson to follow up on this. Were there any conversations with anyone else?

A No, Ms. Erickson to follow up on the what, the leak kind of thing?

Q Yes.

A I had a conversation with her once about what do you think about investigative techniques that could be developed to develop a leak investigation. I was hard pressed to figure out how we would do it in light of the information that was floating around, which wasn't much, and I don't remember getting anything back from Erickson at all. And frankly, I really didn't think I would, but I wanted to be sure because the press articles that were going out didn't give you any leads that were significant or helpful.

MR. DINH: Off the record.

(Discussion off the record.)

BY MR. IVEY:

Q Did you talk with anyone else in the Department of Justice?

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A Not that I know of.
Q Let me ask you some questions about Paula Casey. Now, if I am recalling your previous testimony correctly, you had a conversation with Irv Nathan?
A No, I didn't. I have never talked to -- I never talked to him in that period that I know of. I knew that he had or at least understood that he had had some contact with Jerry McDowell, but I don't remember any contact with Irv Nathan directly.
Q Where did you get this information about possible source, a reporter, I believe, it was, that you testified --
A Talking to Jerry.
Q McDowell?
A Yes.
Q So McDowell had had a conversation with Mr. Nathan?
A Right. And the bureau, the FBI, I think had had contact with Irv Nathan, too.
Q Did you ever learn who that source was, the reporter?

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A I am not sure who it is, but I believe that eventually he is named in the material you have, I believe. I just can't think of his name. I think I have seen his name, and I believe that it was finally listed in one of the these items, I think.
Q Do you recall if it was Jeff Gerth, G-e-r-t-h, from The New York Times?
A That may be the person. I am not positive. But I am positive that it is somewhere in the materials, and that is a name that I am familiar with and I know he was writing articles in that period. I just don't know if he was the guy.
Q By "materials," do you mean the chronology?
A No, the investigative reports in that period, you know, that were done by the FBI, memos that were done to the FBI in that period of time by Jack Keeney early in the September period. That sort of thing.
Q Let me hand you a document, this is a memorandum from John Keeney to director, FBI, dated September 21, 1993. I direct you to the second paragraph there on page 2062, Bates stamp number

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2062.
A Okay.
Q Is that the --
A I think there is a later document. I am unfamiliar with this. There is a later document where they actually name the person that Irv has in mind and I am not sure whether it is Gerth. I think that it is.
Q Now, I take it you don't know whether Mr. Nathan provided any information or had a conversation with the reporters that he mentioned?
A No, I don't know that.
Q Did you ever hear anything one way or the other from Mr. McDowell about that?
A I am sure I did, but that's why I'm saying that you got that and I think there's some subsequent memos. And the only reason I am not telling you who the source may have been is I am just not sure.
Q That's fine. I appreciate your candor.
Now, were you present at the November 3rd meeting?
A With Paula Casey?

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Q Right.
A No.
Q Did you hear anything about the meeting?
A Before and after, to my recollection.
Q And I think you testified that Mr. McDowell was the person you talked with?
A That's correct.
Q Did Mr. McDowell tell you some of the reasons that Ms. Casey expressed about recusal, or some of the views she expressed about recusal?
A Not so much that. I mean, he did a memo about it at one point, after the recusal actually occurred, reporting up the chain, his recollection of the reasons for the recusal, but I don't remember him specifying reasons, although he might have said there were reasons for that. I just don't remember the discussion.
What I remember fixed in my mind was he said we are going to be talking to Paula Casey, paraphrasing, and we are going to be talking about recusal, and then coming back after that meeting and saying Paula Casey is going to recuse.

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Q I believe you testified earlier your sense that the Hale allegations was the reason you thought recusal would have been appropriate.
A Yes, that and the public -- what was coming out in the public, and the necessity or at least the need for an investigation, where it wouldn't be affected adversely by any suggestion, that the particular investigation was being conducted by anybody associated closely perhaps with anybody involved in the investigation, even as a witness, like the President. So that was a reason. I mean, that's a reason I think was on the minds of people who were reviewing it at the time.
Q Now, were you aware that negotiations with respect to Mr. Hale and a guilty plea were ongoing?
A Sure, we were fully aware. Paula Casey was sending us copies of the letters that were being exchanged. At some point, she sent copies and I think later, as this went on, sent us copies of what was occurring.
Q And it was a fairly lengthy negotiation with respect to --

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A I don't know how long it was. He was negotiating with him, and in my judgment, was doing exactly the right thing in dealing with it.
Q When you say that, does that refer to the fact that Hale was reluctant to make a proffer with respect to information he knew?
A Step 1 in the process is Hale proffers, and he proffers with leaving us free to use the fruits, but not necessarily the admissions.
And that's pretty fundamental in dealing with someone who is trying to negotiate a disposition less than what you mean go into court or think you can go into court and prove. So to the extent that they were insisting on a comprehensive proffer from Hale, that was exactly the right thing to do.
Q And what's the reason for that?
A You don't buy a pig in a poke.
Q And by that, what do you mean?
A By that, what I mean is you don't go blind into taking a disposition from a person, and that's especially true if the person is trying to posture themselves as a witness. You're interested in

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dealing, knowing what it is your getting in return for what you are giving, and the only way you can know that is, in my view, in most cases, is to get a full and comprehensive proffer from the person, perhaps an attorney to proffer first, followed by a proffer from the person. And then you can investigate it to determine whether it's truthful.

And then if you think that the information is sufficiently valuable, you can go the next step and determine whether or not you are going to accept a disposition or work out a disposition, and if so, what that does disposition is going to be. That's the process.

Q That's standard prosecutorial procedure?

A Especially in white collar cases.

Q Now, do you know if Ms. Casey was reluctant to recuse because of an absence of a proffer or a statement by Mr. Hale of what he knew when to Mr. --

A I don't know what United States Attorney Casey's thinking was at all in that period. I just don't know what was on her mind, what she was thinking about. She attended the meeting on December

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the 3rd apparently, and there was a discussion about how best to handle the matter. She probably arrived there, as most of us would, with an interest in handling a case that was ours and assigned to us, and interested in pursuing it and feeling quite confident that you could.

And then after discussion, apparently reached the conclusion that, yes, the right thing to do, the proper thing to do under the circumstances, was to recuse. That's my read of it.

Q Now, I believe Mr. Hale made public statements with respect to Mr. Clinton, the type of statements that were the proffer that I assume the prosecutors were seeking?

A Well, as I recall, his lawyer had called Lindsey, and the White House even, in that period of time. I think that was about the time that Lindsey received a call from Randy Coleman. I just don't remember the chronology exactly, but it seems to me that Coleman was doing what he could to try to work out a disposition that was totally one-sided and favorable to his client by doing whatever he could to

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get it. And he was talking to the press at the time to try to do that, or at least to advance his own cause and to put pressure on, to try to get what he wanted from Casey and her office, and her office was resisting giving him that kind of a deal.

Q Now, when you say "one-sided," what do you mean by "one-sided"?

A Totally advantageous to him and no advantage to the government, basically.

Q If I recall this correctly, he was seeking a plea that involved no felony?

A I think he was seeking something lenient, grossly lenient, and was refusing to proffer what he had in a meaningful way, or a way that was satisfactory to the United States Attorney or anybody else. That's my sense of it.

Q Okay. And when you say that he was making statements publicly to advance his own cause, how would those statements have advanced his cause?

A I have no idea, unless he thought that perhaps that would bring some pressure to bear, to push this thing toward a disposition, his

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disposition, but I don't know what was in Coleman's mind. It is not totally unusual for defense lawyers to employ the press.

Q And they, I guess in this situation, employed the press in order to facilitate the one-sided --

A To help the client. It is fair game, it is fair game. They talk to the press and I think they talk to whoever they can talk to, within the government even, if they can, to try to help a client.

Q And that would be to facilitate the one-sided arrangement that you mentioned?

A To get the disposition they want. And I say one-sided because in my view it was a nonstarter.

Q Do you know if there was any issue about how the recusal would take place? And by that I mean, one type of recusal would be the case would simply be sent back to main Justice. Another type could be, I guess it is a downward recusal, where, in this case, the U.S. Attorney would be isolated from

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the investigation and someone else in her office would handle that.

Do you know if that was discussed at all in the meeting on November 3?

A No, I don't know that. But I am positive that the discussion would have been that the Little Rock United States Attorney's Office should recuse, as an office, and be out of the investigation. That had to be the discussion, but I wasn't there.

And, very shortly after that, almost immediately after that, I got the word that we were going to send a team down and Paula Casey wanted to get this done, posthaste, right away. So as soon as her letter of recusal was published, I believe, we sent McKay down. She wanted him down right away, so we sent him down the 9th of November 1993.

Q So she sent the recusal letter, I believe it was November 5th, 1993, two days after the meeting at the Department of Justice?

A That's what my chronology shows and I am sure that's correct.

Q Does your chronology show when she was

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confirmed as U.S. Attorney?

A No.

Q Do you know if it was late September of 1993?

A I am not sure. I don't know.

Q Do you know how the recusal issue was brought to her attention?

A No.

Q Do you know if she received any phone calls from Jean Lewis?

A No.

Q No?

A I think Jean Lewis -- that's the RTC person, I think she said she talked to the office. I don't know if she ever said she talked to Casey or not, but no, the answer is no.

MR. FISHMAN: The answer is no, you don't know.

THE WITNESS: The answer is no, period. I don't know whether they had contact.

BY MR. IVEY:

Q Do you know if Donna Henneman, or anyone in

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the EOUSA's office, contacted Paula Casey with respect to this matter in September or October of 1993?

A I don't know.

Q Do you know if the EOUSA's office contacted Paula Casey to request that she send a declination letter to the RTC with respect to criminal referral C0004?

A I don't know.

Q You mentioned earlier that the nine referrals came in about the time that she declined C0004. Do you know if there was any type of causal relationship between those two events?

A I don't know that either.

Q So by your previous statement you weren't trying to imply that?

A No.

Q Let me ask you some questions about the declination letter. Do you know at what point the "package" was sent back to the U.S. Attorney's Office?

A No.

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Q Let me ask, is there a process by which this is normally done, when main Justice decides, for example, we don't think you should recuse, and wants to convey that to the U.S. Attorney's office that made the request, is there a standard procedure for doing that?

A Well, there is a procedure on recusal. It is published in the United States attorney's manual and then there was a blue sheet, we call it, supplementing that in 1992. It doesn't add much to it, but it is a little more specific. It sets out a procedure.

But in my experience, what is likely to occur is that the communication will go back from the deputy's office, or the Executive Office for U.S. Attorneys telling the United States Attorney about whether or not there is going to be a recusal ultimately. I know of a situation where I have talked to an United States Attorney on a totally unrelated recusal, and I told him that we would take the United States Attorney's matter.

So, in practice, I am not so sure that

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there is a procedure that is in force all the time. In this instance, there would be a usual procedure simply by virtue of the routing. The matter originated in the Executive Office for U.S. Attorneys through Tony Moscato. I'm talking about the earlier recusal now.

Q That would be October of 1992?

A No, January of 1993, when the letter came in. The procedure there would be that the director of the Executive Office for U.S. Attorneys goes to the Attorney General through either the principal associate deputy or an associate deputy, the title is both in the various documents, through him, and with the recommendation. The associate Deputy Attorney General wants to consult with the criminal division, confers with the criminal division and sends it down as an action item.

What that would mean, in the ordinary course in the department, is that a report would go back, a document would go back or a proposal would go back or whatever was produced in the criminal division would go back to the person who sent it down

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and assigned the work, so that would be Douglas Frazier at that time. That person would make a determination or talk with whoever that person would consult with, and at the time that that went up, there was an acting Attorney General.

So, one would expect, in the ordinary course in those situations, that there would be a decision upon whether to visit that with the acting Attorney General or not. And then the decision would be communicated to the United States Attorney in some form, and that could be communicated through the Executive Office for U.S. Attorneys which initiated the whole thing.

And that would not be unusual, that that decision then would be communicated from the Executive Office for U.S. Attorneys.

Q Okay. Now, at this point in 1993, the decisions about recusal were made by?

A You are talking about January now?

Q Well, all of 1993, I guess.

A The decisions about recusal were made by the deputy Attorney General's office. The deputy

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Attorney General's office usually was involved in that kind of thing. I don't know who makes the final decision.

Q Was there a Deputy Attorney General in place in March 1993?

A I don't know if they had an acting in place or not. I noticed that the routing slip was addressed directly, as I recall, to Stuart Gerson, through Douglas Frazier.

Q And Douglas Frazier, do you remember what position he had in the deputy Attorney General's office?

A Principal associate Deputy Attorney General, which ordinarily would be his principal deputy.

Q Do you know if at that time Mr. Frazier had the authority to make a decision with recusal?

A If Mr. Frazier did?

Q Right.

A I don't know whether he did or not.

Q Have you ever spoken to Mr. Frazier about this recusal issue?

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A About this one, no.

Q Do you know if an absence of a Deputy Attorney General would be a decision for the Attorney General's office?

A I don't know. I don't know how they worked that out at that time.

Q Do you know if Mr. Frazier sent a cover letter or a letter to the U.S. Attorney's Office with respect to the Justice Department's position on recusal?

A A cover letter? I don't know.

Q Do you know if the U.S. Attorney's Office was contacted in any way -- and this is in the spring of 1993 -- with respect to the main Justice determination on recusal?

A The spring of 1993?

Q Yes.

A From what I have seen, no, and I have no personal knowledge that they were contacted at all. My personal knowledge of it is that it was signed off on, on March 2nd, 1993, in the fraud section, addressed to Jack Keeney. And then from looking at

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the files, it was signed out by Larry Urgenson on March the 19th, 1993, addressed to Frazier. From that point on, I have absolutely no idea what happened to it.

Q Just so I can trace this, the fraud -- you said fraud section?

A Fraud section in the criminal division.

Q Is that part of the criminal division?

A That's right, it's a subordinate component.

Q And so this memo would have gone up to Mr. Keeney, who was then acting, I guess, in charge of the criminal division?

A He was the acting Assistant Attorney General in charge of the criminal division. Ordinarily it would go from Jerry McDowell, the section chief, addressed to Keeney, in this instance, again according to records in the department, the acting deputy Assistant Attorney General of the criminal division who oversaw the fraud section, Larry Urgenson, was the person who actually signed the document out. That had been prepared in the fraud section, the documents, and forwarded them.

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Addressed to Frazier, the guy who asked the division to look at it in the first place. That was addressed to him. It was apparently dispatched according to the division records, on March the 19.

Q The criminal division was only to make a recommendation with respect to recusal?

A That's correct.

Q They didn't have the authority to make a final determination --

A They not only did not have the authority, they weren't asked to make a final decision.

Q You testified you didn't know if Mr. Frazier had sent any type of letter to the U.S. Attorney's Office or what types of communications may have taken place between main Justice or the U.S. Attorney's Office with respect to recusal, and --

A That's right.

Q -- so I did want to ask you about the letter that Ms. Casey wrote. I believe it was with respect to recusal. I'm sorry, the declination.

MR. FISHMAN: The October 27 letter.

MR. IVEY: Yes.

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BY MR. IVEY:
Q I'm sorry, there is no Bates stamp number, but I know you testified about it earlier. I am referring to a letter from Paula Casey to Jean Lewis, dated October 27, 1993. You commented earlier about the line "the matter was concluded before I began working in this office."
And I think your testimony was that there was no conclusion reached by the criminal division or the fraud section?
A That's correct.
Q Do you know if there were any communications from higher up in the Justice Department with respect to this matter, and any conclusion that might or might not have been reached by the Justice Department?
A I do not.
MR. FISHMAN: By "higher up," do you mean EOUSA?
BY MR. IVEY:
Q Specifically, I mean the acting Attorney General or the office of the Deputy Attorney

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General.
A I will clarify. I don't know whether there was any communication, from the Justice Department, from the EOUSA, at that point to her, or from any other component about what to do with RTC criminal referral number C0004.
Q So when you received that, you had some concerns about the wording of the letter --
A No, not concerns, I -- again, a better word is astonishment, not a concern, but simply astonishment to see that, suggesting that that matter wasn't in the United States Attorney's Office for decision, because my impression was and is, from my own involvement in it, not being in the EOUSA and not being in the AG's office and not knowing what may have gone on in those locations, but my impression of it was totally different. Namely that it was going back to the United States Attorney's Office, or at least the recommendation was to send it back to the United States Attorney's Office for whatever action they were going to take on it.
Q And what was the basis of that impression?

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A Because that's what I recommended to Doug Frazier through Jack Keeney, that the matter be sent back to the United States Attorney's Office.
Q And do you know if Mr. Frazier or whoever made this decision adopted your view?
A Well, my understanding is and I haven't seen a copy of the document, but I thought that eventually when somehow they located the memorandum that was prepared for Jack Keeney's signature, and it was signed out evidently by Larry Urgenson on March 19th, 1993, and its attachment, the memorandum prepared by Mark MacDougall, found their way, someplace, somehow, to Paula Casey's office, to her. And all of that occurred a substantial period of time after Larry Urgenson signed out the materials.
So I don't know how they got to Paula Casey, I don't know what communications Paula Casey may have had with anyone within the Department of Justice, about those materials or whether Frazier put a cover letter on it and sent it out to her or anybody else did. I just don't know.
Q You said your understanding was she got

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those materials. What's the basis of that understanding?
A It is my impression.
Q Based on what?
A Just my impression based on her declination or supposed declination, her reliance on Department of Justice materials. The only thing I know was prepared was what was prepared in the fraud section, and again, maybe something was prepared somewhere else, but I don't know that and the way it was handed and the way apparently it was misrouted at some point, I -- I just find it unlikely that they had anything else but I don't know that.
MR. FISHMAN: Can we go off the record?
(Discussion off the record.)
BY MR. IVEY:
Q Let me be clear about this: You didn't speak with Mr. Frazier about what happened with respect to the referral or the request to recuse?
A On the October letter?
Q Right.
A No.

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MR. FISHMAN: I'm sorry, the October letter.
MR. IVEY: October 27, 1993.
MR. FISHMAN: Okay.
THE WITNESS: No.
BY MR. IVEY:
Q And do you ultimately know who made the final decision with respect to this request to recuse?
A To the best of my knowledge, the person who made the final decision was Paula Casey. However, it is phrased in there, when she wrote that letter she sent the letter out --
Q I'm sorry, I misphrased the question. Within the Department of Justice there was an action determined, there was a request to recuse that came up?
A Right.
Q And there was a decision within --
A As I understand it, back to the U.S. Attorney's Office. I don't know.
Q You don't know who made that decision?

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A No.
Q So, I guess it is a logical conclusion that you don't know what was on that person's mind at the time the decision was made?
A I don't.
Q And I think you also testified that you don't know if any of that was communicated to Ms. Casey? You have no direct knowledge about that?
A That's correct.
Q Let me ask you about the matters with respect to the SBA. What was the time frame for these events? You testified about Mark Stevens, at what point did you have contact with Mark Stevens?
A I don't have an independent recollection of that. I did the memorandums of those contacts at the time, and did them while they were fresh on my mind and detailed. The first contact with Stevens, the meetings, I just don't know, but the memos that you have are accurate.
Q I just need a rough time frame.
A It was around -- I want to say November '93. Yes, November '93, that's right.

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Q All right. Now, you testified that you thought Congressional interest was part of the reason that the White House contacted the SBA and requested these documents.

And in your view, is that a legitimate reason for seeking that information?

A That the White House might be interested in knowing what a Congressional committee was asking about?

Q Yes.

A It might depend on what the motive was.

Q Did you have any -- well, I think you testified earlier you didn't -- your impression was this was "totally innocent," I believe was your quote?

A I don't have any reason to question that it was totally innocent. I don't know whether it was or not.

Q Did you lead the investigation to find out what -- why SBA had sent the documents to the White House and what the White House had done with them?

A On those? Well, actually, there were a

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number of leaders of the investigation, including Joanne Harris, including Merrick Garland, including Jerry McDowell, including Allen Carver. And I want you to understand that there were communications going on with people pretty regularly -- the conversations I had with Harris and Garland were fewer, but there were several over a period of time -- in that period of time.

So when you say "leader," I played a role in the investigation, and it was a significant one. I had a team out who was doing the work at Little Rock headed by Don McKay, and one of my functions was to oversee that pretty closely, while doing BCCI and some other things at the same time. That's one reason I had John Artbury maintain close contact with the team that we had out there as well, but I reported to McDowell and occasionally got calls from Harris, and a couple of times from Merrick.

Q And in addition to maintaining these contacts, there was investigatory action taking place, the FBI was conducting interviews?

A Yes.

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Q In your view, was it a thorough investigation?
A Well, in my view, the people that I was familiar with up the chain wanted to do an aggressive, comprehensive, complete, totally honest investigation.
Q And is that what was done?
A Yes. Certainly the part that I am familiar with.
Q In your view, was there any attempt to influence the investigation or to steer your findings in any particular direction?
A The only influence I know about is to do it right and to do it professionally. There was certainly no attempt to steer it in any improper direction whatsoever, at all. There was certainly guidance on being aggressive, an example of that, again, is getting the documents from Kendall and from Foster's attorney. That's steering in a sense. But in my judgment, correct steering, correct influence, and an absolutely honest effort.
Q Was there any steering or influence by

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anyone at the White House with respect to this investigation?
A None that I have personal knowledge of.
Q To the extent you were connected with it?
A I don't know of any.
Q I think I mentioned earlier you testified you thought the motives that prompted it were totally innocent, but I guess I would look for a finding. I mean, did you reach a finding?
A I will say again I don't know what motivated anybody to do what they did. I don't know what's in the minds of people, but based on the objective evidence that was developed during my association with the investigation, I don't know of any illegal or unethical or wrongful conduct by people in the White House who had acquired the documents from the Small Business Administration, that I'm familiar with, that little piece.
Q Was there any formal conclusion reached on this?
A What's that?
Q Was there any formal conclusion reached on

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this?
A Formal conclusion?
Q Yes.
A We never had a conclusion. We had an ongoing investigation, and the independent counsel took it.
Q I see.
Were you near completing your investigation or was there still quite a bit more to do?
A We weren't even close.
MR. FISHMAN: Do you mean the whole investigation or that piece?
THE WITNESS: Well --
BY MR. IVEY:
Q That piece.
A That piece is part of the whole puzzle so the answer is no. We weren't anywhere -- that was part of the evidence gathering process and we would have continued to gather evidence and examine matters. We weren't conducting, if you will, a narrow little investigation of this situation. It was, let's get information, let's look at it and

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let's examine it.
These folks were not under investigation in the common sense of being subjects of an investigation, these were people who were potential witnesses, in our minds' eyes, who had access to information we wanted and we wanted to know about it.
Q Let me focus you on this particular piece of the puzzle just for a moment. You mentioned you interviewed or someone with the FBI interviewed Mr. Eggleston?
A Well, I am sure Mr. Eggleston was interviewed.
Q Lindsey?
A Lindsey as well, and I think Nussbaum.
Q Were there other interviews conducted with respect to --
A I don't know.
Q Do you know if whoever was making determinations about who should be interviewed had concluded that there were more interviews that were left to be done or if they --
A I was sort of the catalyst for this, so in

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talking to Rick Wade, too, and what we should do and there was a general consensus with the FBI. So during that period, those of us who were closer to the line in the investigation were saying this is what we want to do, and here is why. And we were setting in motion ways to do that. So, there was certainly no limitation on access or getting people interviewed that we thought should be interviewed, as far as I know, that the bureau thought should be interviewed. None of that.

Q You also mentioned something about documents being returned, I think by Mr. Eggleston to Mr. Stevens?

A Right.

Q Where did you learn about that event?

A Well, part of it apparently is evidenced in the notes of John Artbury that we looked at earlier in the proceeding.

But that came from Stevens. He reported back that it happened. I think I talked to him directly, too. But he reported back that he had the documents, and had received the documents and that

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Eggleston had given him the documents and had done so outside the building on the street.

Q Do you know if -- with respect to contacting the SBA to initially seek the information, do you know if Mr. Eggleston made that contact?

A I don't know what he did, frankly.

Q I think you were asked about Congressional liaison earlier?

A Well, the contact with Eggleston at that point, in the White House office, I don't know if it was Eggleston directly -- I think it was. I think Phil Heymann had contact with him. And the idea was to speed up the process, to speed up getting interviews of people that we wanted to interview in the White House staff.

Q Let me clarify my question. I meant the initial request for these documents.

A Oh, I don't know. I don't know the details of that. My understanding is, and my recollection is that at some point, Stevens talked to the general counsel of the agency. And my recollection is, from what Stevens said, the general counsel of the agency

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had a conversation with Eggleston and from that conversation directly from Eggleston provided the documents. That's my memory.

Q And your recollection is that was from a conversation with Stevens?

A That's my memory of it.

Q Do you know if it would be -- typically, if the Congressional liaison in the White House would make that request as opposed to the White House counsel's office?

A No, I don't know what they would do. Again, I don't know what typical would be.

Q Now, you mentioned something about an oral request.

Did these documents then go at some point from the SBA, to the FBI or the Department of Justice?

A I am not sure what you mean by "oral request."

Q I thought that when you testified earlier you said that you didn't use a subpoena; I think you said you picked up the phone and made an oral

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request?

A Well, we are talking about -- which documents now are you talking about?

Q These are the documents that were given to the White House and they were given back to --

A We didn't subpoena the documents from the White House. Those documents, as far as I know at least, went back to Stevens, and I believe those -- a collection of which Stevens got were given either to FBI the or to the team that was investigating the matter at that point, McKay's team.

Q Right, but my question is, was there a subpoena from either the -- or from the Justice Department?

A No. To the White House?

Q No, to the SBA.

A No.

Q That was done --

A Dealing with the investigators in the SBA. We had the SBA, at that point, assisting with the criminal investigation that our people were conducting.

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Q Do you know if that was an oral request, then, that was made?
A Right, right.
Q Do you know if there was a transmittal letter?
A Of the documents back --
Q From SBA to the Justice Department?
A Not that I know of. The written record of that, again, consists of the file memos and I guess the FBI 302s that were done. That was the way of documenting what was occurring so there was a documented record of the communications. But I don't know of any letter, and at that same period of time, Dwight Bostwick, who was on the team, was dealing with the SBA trying to get still additional materials. And I think Dwight may have written a letter on other stuff, but not this.
Q Okay, so there was no transmittal letter and there was no letter requesting the documents?
A Not that I remember that there was a transmittal letter.
Q Do you know who made the request?

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A For what?
Q For these documents.
A To have them returned?
Q No, to have them come to the Justice Department.
A No.
MR. FISHMAN: After they were returned.
BY MR. IVEY:
Q After they were returned.
A After they were returned to the SBA?
Q Right.
A I am hoping we made a request. I'm sitting here thinking that surely we did, but no, I would have certainly wanted them to see what they were and to know what they were.
Q Okay.
Is it typical for documents to be passed without a transmittal letter under these circumstances?
A Sure.
Q Nothing unusual about that?
A Not necessarily, no. As long as you've got

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some record of what's going on someplace.
Q And again, in the absence of a transmittal letter, would it also be not unusual for the request to be made orally as opposed to in writing?
A No. No.
Q Let me go back to Mr. Nathan for a moment.
A Okay.
Q Mr. Nathan, to my understanding, reported to Mr. Heymann; is that correct?
A That's right, yes.
Q His relationship to you, then, was a working relationship, not a subordinate relationship?
A Irv Nathan?
Q Right.
A No, he is way above me in the hierarchy, significantly above me in the organization.
MR. FISHMAN: Off the record.
(Discussion off the record.)
BY MR. IVEY:
Q Did you frequently have conversations with Mr. Nathan about issues within the department?
A No. Except when he was a defense lawyer.

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And that wasn't frequent.
Q During his tenure within the department?
A No.
Q Did it strike you as unusual that the conversation with respect to the source, which we suspect was --
A You mean the communication that Irv Nathan would have with Jerry McDowell, because I didn't have any communication with Irv Nathan at all?
Q Right.
A No, no, not unusual. I think he was communicating with the FBI. I think Jack Keeney was involved in that period of time, so all of that would be very normal, natural, usual contact.
Q Now, with respect to having a reporter of a source of this type of information, information relevant to an ongoing plea negotiation, is that typical with the law department?
A You know, I am not sure what "typical" is in criminal investigations. I am serious, really.
Q Let me phrase it this way --
A I don't know, as we sit here, who his

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source was, I really don't. But I think it is documented. And again, when you start asking me about whether it was unusual to have a reporter, it is hard to answer because I don't know if it was a reporter. But the short answer to that would be to have a reporter as a source -- I have no way of looking at that.

Q I will rephrase it. You have a career in law enforcement that is fairly significant.

A It's covered a few years and I don't use reporters as sources. I hardly ever talk to reporters. And prosecutors differ. I am one who simply believes that the less communication with reporters that people have during investigations the better, except to ensure that -- when it is necessary, to make sure that it's accurate, that has been misrepresented, that when you can appropriately do so the government does so. But by and large, they have their job, prosecutors have theirs, and contacts with the press belong at the policy level, namely, the Irv Nathan level or the AG level. That sort of level. Or the Assistant Attorney General level and I

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am not at that. Generally we don't favor communications with the press.

Q Why is it that you don't personally deal with reporters as sources?

A With reporters?

Q Yes.

MR. FISHMAN: He is not saying sources, he is saying period.

THE WITNESS: Or in any fashion.

Because within the Department of Justice, there is a press policy to begin with which requires those kinds of inquiries from the pleas to be referred elsewhere.

BY MR. IVEY:

Q Let me back up because I thought you said you don't use reporters as sources, that you thought it was a bad idea.

A No, I don't. For me.

Q That's what I am asking.

A I wouldn't turn away a reporter if he said he was aware of a bribe allegation any more than I would turn you away or somebody else. But in terms

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of establishing a relationship with a reporter like that, I wouldn't do that.

Q And why are the reasons aside from --

A I think there is a stark difference between a federal prosecutor and a reporter. They are very properly attempting to collect information to write stores.

Our function is to try to determine facts, and then make a judgment on what to do with those. And that impacts on the freedom of individuals, and there is a certain inconsistency there in dealing with reporters who may do something wrong with information or want information or plant information, for their own purposes.

Q Well, they also want to publicize information, too; right?

A Or publicize information, and I don't think that has any place in criminal law enforcement and I think most reporters understand that.

Q That would be particularly true in a situation where an investigation or plea negotiations are ongoing?

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A Right.

Q Was there ever any attempt -- or did Mr. Nathan ever identify this source personally?

MR. FISHMAN: To him?

BY MR. IVEY:

Q You mentioned a memo, I think, but I am not clear.

A I don't know whether he did or not. Not to me.

MR. DINH: We are still talking hypothetical here, because he is not sure there was, indeed, a reporter who was the source.

THE WITNESS: I think that's a fair thing to say. I am just not sure, sitting right here, who the source was, what capacity this source was operating at the time. But my impression, again, is that ultimately that was made part of the record.

MR. FISHMAN: Off the record.

(Discussion off the record.)

BY MR. IVEY:

Q Did you have any knowledge of Mr. Hale or his attorney contacting any Congressional office or

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member of Congress prior to entering his plea?
A I don't know of -- sitting here now, I don't remember that. May have, but I don't remember.
Q Did you have any role in setting the priorities for financial institution investigations with respect to the Justice Department, by the Justice Department?
A Yes.
Q What was your role in that?
A In the early days of the financial institution fraud program, following the enactment of the Financial Institutions Reform Recovery Enforcement Acts of 1989 --
Q FIRREA?
A Yes -- there were determinations that had to be made about what would be investigated, and -- as priority matters and that sort of thing and we work with the executive office for U.S. attorneys on that. And then special counsel, financial institution fraud, Jim Richmond.
Q At what point was this -- this is 1989,

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1990?
A He was a nonstatutory special counsel appointed by the Attorney General.
Q Who was his successor?
A Jim Richmond's successor, Ira Raphaelson, R-a-p-h-a-e-l-s-o-n.
Q How did you go about setting the priorities for these investigations? Are there standards that you follow?
A There was a whole lot of discussion with the FBI, the regulatory community, within the Department of Justice, which resulted in ultimately the development of a sort of a major case approach. Richmond was involved in it, later Ira was involved in it, in doing it.
Q What is the major case approach; what do you mean by that?
A Well, there was a category of matters, investigations, that were defined as major. That definition was distributed to all the United States attorneys offices in the country by the executive office for U.S. attorneys. And it involved matters

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where there was a loss of approximately $100,000, or more. Insider fraud involving significant insiders within a financial institution, multiple borrower from the same financial institution.

Let me -- maybe I can shortcut this a little bit. Attacking Financial Institution Fraud is a quarterly publication that is given to Congress that details the whole program from the beginning to the end. These things have been published since I think as early as 1990, somewhere around there. They just detail the whole program, but to get into it is going to take some time, and I don't know if you really want to.

Q Well, I am aware of the documents that -- the publications you are referring to because they send them to the committee every quarter, I take it. But I didn't want to get a sense -- off the record.

(Discussion off the record.)

BY MR. IVEY:

Q I guess what I did want to get at, the publication sort of lists activities that the Justice Department has conducted with respect to these

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institutions, but I did want to get a bit of a sense of how you decided which institutions to pursue and how you prioritized it.

A Let me try it this way and maybe this will help.

The President of the United States, George Bush, came to the Department of Justice to a meeting of the United States Attorneys from around the country and the special agents in charge from around the country, right about the time of FIRREA, to kick off what was going to be generally the FIF program in the United States, F-I-F. Jim Richmond was the first special counsel for financial institution fraud designated administrative before the Crime Control Act of 1990 established that position in the law, which sunsets in November of this year.

In order to manage the case load, and to have emphasis on the most important matters that could you see in the country, there was this definition established in the executive office of the U.S. Attorneys, in a reporting requirement and in many offices in the country there were financial

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institution coordinators. And initially there were a number of positions to do financial institution fraud work, many offices adhered to that very strictly, others less strictly, in terms of dedicated resources to FIF.

With the size of the case load and the finite resources the emphasis was on establishing and developing those major cases. Not to the exclusion of all other cases, I hasten to add. There was nothing there that said those are the only cases you can look at. United States Attorneys and FBI in the various districts certainly had the authority to pursue those matters that they felt were appropriate whether or not they fell within some broad definition of major case, but for tracking purposes especially, we established this major case definition for the U.S. attorneys.

Q Now, how many cases -- I mean, this seems like a pretty broad definition to me, I am sure you are more familiar with it than I am, but a $100,000 cut-off seems to be relatively low for what some of these institutions lost.

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How many of these institutions would have fallen into this category in 1992?

A Well, this is by -- in terms of fraud loss which can be much different from losses resulting from failures or any number of causes. And again, that's a guideline. Within various jurisdictions people are going to be dealing with their most significant cases as they have resources available to deal with them.

So they may have something above that or below that, but Attacking Financial Institution Fraud is really the best source there, because you can see the numbers of prosecutions in that major case area reported in each of those and you can track them from way back in the beginning of them program. And you can also see the FBI statistics which show the number of matters by district in the United States or field division. FBI --

MR. FISHMAN: Off the record.

(Discussion off the record.)

THE WITNESS: I understand you to be talking about financial institutions, and when you

look at Attacking Financial Institution Fraud and you look at the FBI's reports in there, you see that they report a category of failed financial institution cases, which gives you some impression of cases that are emphasized by -- within the entire arena of financial institution fraud.

Those are the big failures and those are cases which may generate any number of referrals, related or unrelated. It gives you a number. I don't know what the number is. I mean, there were a very large number -- I mean, at one point we had 700 failed financial institutions in inventory, plus 10,000 or so major financial institution fraud cases and I think 5,000 or 6,000 of those were major.

BY MR. IVEY:

Q I didn't follow you there, you said 700 failed institutions, 10,000 --

A In dividing it out the way the Bureau would look at it, they had separate categories of failed financial institutions. If they had an investigation involving a whole series of allegations involving one failed financial institution they counted that as one

investigation, even though it might be 30.

Q Okay.

A Then there was a separate category in the bureau of $100,000 and above matters, irrespective of these failure cases and different. And they would run an inventory of around 5,000 of those. I think the current inventory is in the neighborhood of 4000 or so. So there was a large inventory that would continue to turn over for a period of time. It's gone up and now it's gone down.

Q Now, the number 700 you used -- and I recognize this is an approximation --

A Right.

Q -- that's with respect to failed institutions?

A Failed financial institutions, right.

Q And would that have been about the approximate number in 1992 or do you think it would have been higher?

A I would have to go back. I think about that period of time it was peaking out, '91, '92, so that's probably roughly accurate.

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Q And did they divide these up according to federal districts?
A Well, I -- generally, yes. You can see them by FBI division and you can see by district what people have, so generally yes, you could have a case in multi -- in a number of districts.
Q Do you know if that was true in Arkansas, that they divided them up by district?
A Arkansas is like anyplace else. I mean, they -- if they got a referral in the United States Attorney's Office in that sense, though, they would treat it as if it were a referral in the Eastern District of Arkansas, if that's where it was venued.
Q Now, who investigated these failures? Can you tell us briefly how that broke down? Obviously the RTC was involved. Did the FBI go in and participate in these investigations?
A When they are in the FBI inventory, these matters I am talking about are all FBI investigations. In criminal investigations we use FBI and United States Secret Service in some. In some you might have the Postal Service involved. You

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might have all three together. You might have the RTC inspector general. You might have Assistant United States Attorneys in the various districts.
Or if it were one of our task force operations that we were running out of the fraud section you would have fraud section lawyers, FBI people dedicated to it. Secret Service in some cases working it. The FBI was the main and is the main investigative agency for criminal allegations involving financial institution fraud.
Q And how would the FBI coordinate its activities with the RTC investigations that were taking place at that time?
A They would work typically directly with RTC counterparts, if it was the inspector general, the IG's people in coordinating investigations like that, though, usually it is an attorney who is working the investigation, like an Assistant United States Attorney or like a trial lawyer, who is going to be working with the appropriate person in the field from the Resolution Trust Corporation who may have an interest in what's going on.

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Q Okay. Well, before we get to the point where we've targeted the specific institution, and that sounds to me like your answer there is you've got an assistant that's going to deal with banking -- S&L X or something like that, a particular bank or financial institution, before you get to that point, you are looking at the state of Arkansas, and you are trying to determine which financial institutions are going to be on this list of priorities. How is that decision made, and -- well, by that I mean not the standards you talked about already, but is there any interaction between Justice Department, the U.S. Attorney's Office, the FBI, the RTC?

A In a U.S. Attorney case, ordinarily the coordination would be between the U.S. Attorney and the special agent in charge in the division. They would determine how they are going to do things within that venue.

Q This is before -- I mean, before a case is chosen?

A But I mean generally how they are going to attack crime in that jurisdiction, in that venue, in

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that district, ordinarily, the special agent in charge and the United States Attorney or the United States Attorney's designation, are going to talk about how they are going to manage inventory.

And you have to understand that these offices all around the country had existing inventories of matters that were open in the FBI -- or open in both the FBI and the U.S. Attorney's Office involving financial institutions. Way before this program, if you will, got started, as a result of FIRREA bank fraud was being prosecuted all around the country and they all had inventories. And it is one of the reasons that we focused on it and had a program because there was a huge inventory of matters that had to be examined and then you had the S&L failures. So all that did was bring it into a little more organized, systematic way of dealing with it nationwide.

Q Do you know, after this determination was made with respect to this initial list of institutions to focus on, how the work was divvied up at that point? I mean, did it then go to --

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A It's going to differ from district to district. They don't all act alike. When we went to work with the Dallas bank fraud task force and tried to organize what we had, we had a large number of failed financial institutions and sat down with the FBI and determined how we were going to attack the inventory that we had and the allegations we were going to have. And such things as statute of limitations, amount of loss, whether the fraud was systemic or not, a number of factors come into play in deciding how you will prioritize within a given district. So one shoe doesn't fit all is what I am saying.

Q I guess I mean with respect to individual investigators. I mean, we have a document here that's from -- it is a memo from Jean Brennan, who I think is now Jean Lewis to Clark Walton dated December 11th, 1991. The subject is referral schedule. And if I can read the Bates stamp number here it is 4594 on the first page and the second page it is cut off, actually it was 4595.

MR. FISHMAN: That would not be a document

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produced by the Department of Justice, I assume, however.

MR. IVEY: That's right.

MR. FISHMAN: It is not our Bates number.

BY MR. IVEY:

Q I wanted to ask you if that listing of institutions would be the way that typically these institutions would be set out in order of priority?

A Looking at that exhibit, I don't see anything exceptional about it. It doesn't represent a standard operating procedure for the entire government necessarily, but all it shows is communication between the Resolution Trust Corporation official and the FBI on trying to figure out how best to attack a workload. That would be common.

Q In attacking a workload, would you think it would make sense to look at things like the amount of the loss of a failed institution in determining where it should come in the order of priorities?

A The amount of loss in the institution? That's a factor.

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Q And would you also look at the possible amount that could be recovered by the government?
A That's a factor, and that factor may be less important if you have an insider than an outsider.
Q And with respect to civil recovery, would you also look at things like statute of limitations, for example, on the possible civil recovery?
A Typically, civil recovery is going to be in the minds of the regulatory community. In failed cases they may have in mind some civil recovery against former directors and officers, or accountants or lawyers, that sort of thing. Sometimes in looking at cases we would consider whether or not Section 951 of FIRREA was a viable alternative to criminal prosecution, 12 USC 1833 A, I believe, which is a civil money penalties action. So civil action is usually under consideration by the regulatory community or either civil or administrative.
One of the ideas of the policy that Ira Raphaelson was interested in was notion of a sanction resulting from misconduct, criminal, civil or

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administrative, or perhaps even a combination. But if appropriate, there should be sanction and the idea would be to try to get the most appropriate sanction or combination of sanctions.
Q Did you ever review or see any referrals that were sent from RTC field investigative offices to the U.S. Attorney's Office?
A Plenty of them. Yes.
Q Do you know if there was any concern, either within the Justice Department or in any of the U.S. Attorney's Office, about the quality of some of these referrals that were sent?
A I think the U.S. Attorneys in the Bureau were always, in a number of offices, trying to get better referrals, and the regulators are trying to get better service. So, sure, I mean, you were always saying can we do better. There was a referral procedure that began back in around 1984 that was established by the national bank fraud Working Group that the regulatory agencies used, and they published regulations on criminal referrals as a result of that. It set out when they would make referrals and

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then their people were responsible for putting together the referral packages and to make them as comprehensive as they can.

Q Now, if I am not mistaken, the RTC also set out its own criminal referral standards form, I guess, in 1993 -- I believe '92.

A RTC also had criminal referrals they made, yes.

Q You know, with respect to getting "better" referrals, by "better," what do you mean?

A You may have superb referrals coming in from a given office. You may have some that people feel there should be more information about the suspected criminal activity, more documents along with the referral. That sort of thing.

Q Do you know if there were complaints from the Justice Department to the RTC about the quality of referrals --

A There were --

Q -- in 1992, 1993?

A I don't know about the time frame. I know that -- I am positive that from time to time there

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were complaints about referrals not being as good as prosecutors and investigators wanted them to be.

Q Do you know if any of those complaints were related to referrals generated by RTC in Kansas City?

A Kansas City, I don't know. I know -- I was telling you earlier that the bureau was concerned about speed and timeliness. And timeliness is always an investigator's concern, getting timely information.

Q You are referring back to the production of documents issue?

A Production of documents or production of a referral.

Q Do you know if there was a change in the RTC policy which required a review of referrals by the legal department before they were sent out to the U.S. Attorney's Office?

A It was always my impression that they were always supposed to get legal review for referrals, whether they did it or not. That they would have some legal review within the Resolution Trust Corporation, as they do usually in most of those

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organizations, to determine whether or not there was a basis for the referral.

Q So you -- I take it you think legal review is a good idea?

A Yes.

Q Would it be fair to say that many of the investigators that write these referrals are not lawyers?

A Yes. Although, as I understand it, they generally go through legal review by people who are supposed to be more familiar with the procedure.

Q Do you know if investigators typically contact the EOUSA within the Justice Department?

A I don't know what "typically" is, honestly.

Q Are you aware of any certain situations where that's occurred?

A Yes.

Q Do you --

A Specifically, in connection with Whitewater.

Q So this would be the Jean Lewis contact, phone call to EOUSA?

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A I have seen the memorandum, I've got it mentioned in this chronology, so I am aware of that contact and the Donna Henneman contact, apparently I read about that.

Q I take it from your comment that you are not aware of any other?

A No. Actually, I am aware that the Resolution Trust Corporation and other agencies would communicate with the EOUSA. That's not unusual, and the reason it is not unusual, partly, is they have priority program teams in the EOUSA, and one of those priority programs that the EOUSA was interested in or overseeing was financial institution fraud.

They had a close relationship with the RTC and the Federal Department Insurance Corporation people on issues of recovery and they were dealing with them all the time on collection issues, so do I think this was really unusual, no.

Q Well, to the collection issues, would those be in civil cases or criminal cases or both?

A Restitution, largely in criminal cases.

Q And this would be -- it sounds like this

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would be the time of disposition of the case?
A Just figuring out how to track it and know what you are getting and being able to make a record of restitution that has been ordered as a result of a conviction, and then collected, in maintaining a record of that collection. So there was a lot of communication between EOUSA and the regulatory community on that. A lot of communication on criminal referrals, generally, in the process and the procedures, so it was not unusual for regulators to come to EOUSA on matters.
Q Who would they contact typically?
A The legal office or the priority programs team people, I suppose. But again, I am not sure what "typically" means in that context.
Q Was there a name of someone in the office, you know, when these priority programs were publicized that listed a personal contact --
A Well, Doug Frazier was working on that and there is a woman who in particular does FIF and I just can't think of her name now.
Q Is that Donna Henneman?

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A No, although Donna Henneman was in the legal office there.
Q With respect to the restitution that you mentioned earlier, that would be a point after sentencing or disposition, not before a case has been accepted by the Justice Department?
A Right, right.
Q You also mentioned with respect to criminal referrals as well, this would be investigators calling up to find out what the Justice Department has decided to do with the criminal referral?
A Usually what would happen is locally someone would call the U.S. Attorney's Office or the FBI and ask, try to talk to the case agent who is assigned to it or the Assistant U.S. Attorney who was assigned to it. That's what would happen, they wanted to know what was going on. They might call the fraud section in a particular case if they wanted us to call somebody to check into it.
Q I thought your testimony had been that these investigators call EOUSA?
A No. I don't want to you think there is a

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procedure where some investigator is going to call one source in the government. I mean, my read of it is that probably the Arkansas U.S. Attorney's Office told this woman that they had made a referral to the Justice Department and hadn't heard about it and told her it went to the EOUSA. She called the EOUSA as a result of that to try to run it down. That's my speculation. Because from what you read in the press and from what she said on television when she was testifying, she apparently was contacting the United States Attorney's Office in that period or had contacted them, some months after, apparently, she had made the initial referral, to check on it.

So I suppose she then called EOUSA when she was told by the office, oh, we have sent it to the EOUSA, but I don't know that. I think that's a reasonable supposition, though.

Q Well, I appreciate that, but I wanted to back up to the point that I thought you had made. Maybe I misunderstood, and if I do -- if I did I apologize in advance, but I thought you said that there was a point of contact within the EOUSA's

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office for these investigators?

A There was a priority programs team. That was not their point of contact. There was a priority programs team that was supposed to sort of over -- monitor the program around the country. And they would get these reports from the field in that team and collect them. They would take assignments -- they were given like the restitution project and that sort of thing -- and deal with people. They were not necessarily a point of contact.

Again, the usual point of contact is the United States Attorney's Office or the FBI locally, for people who had made a referral to that office. That's ordinarily where I would expect them to go. That wouldn't stop them from calling fraud if they thought they wanted to call fraud or calling the EOUSA if they thought they needed to call the EOUSA. They could do that. More often they would go directly to the U.S. Attorney's Office or the FBI locally.

Q And this priority program that you mentioned --

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A Tracey Carey. Tracey Carey, I'm sorry. She was an attorney in the executive office for U.S. Attorneys, who, from my perception of it, had the lead on the FIF program.
Q And FIF is financial institution fraud?
A Yes.
Q And is FIF within EOUSA?
A See, they are the administrative office of the United States Attorneys around the country and that's their function, to serve those United States Attorneys' offices in an administrative capacity and they have that one function with particular programs, paying especially close attention to that.
Q Right, but with respect to contact with investigators, as you said normally it would go through the U.S. Attorney's Office?
A Right.
Q But I am trying to understand what the FIF program was. It is a collection -- information collection?
A You mean within the priority programs team?

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Q I'm sorry?
A The priority programs team is just a subordinate element within the EOUSA with responsibility for recordkeeping, disseminating information, keeping track of problems that may come up in the field if someone needs to know about them, working with the fraud section in the criminal division, working with civil division components, participating in the national bank fraud working -- that sort of thing.
That's their function.
Q And did you say -- I want to be clear about this -- that there was someone in that group who served as a contact for investigators?
A No.
Q So my recollection, then, my understanding of you saying that investigators typically call, or frequently call the EOUSA's office, my recollection is incorrect?
A From investigators, no. I don't mean to communicate that at all. What I mean to communicate is you could have frequent contact from the

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regulatory community, from people within the RTC, within the FDIC and other regulatory agencies with the EOUSA, on matters relating to financial institution fraud.

Q But that would be someone at a policy level in one of these regulatory agencies?

A Not necessarily a policy level, but more usually somebody in Washington, D.C. who is more senior, certainly, than a field investigator.

MR. IVEY: Off the record.

(Discussion off the record.)

BY MR. IVEY:

Q Did you ever speak with Mr. Frazier after seeing the Casey declination letter?

A No, about --

Q Right, about the letter.

A And I don't remember talking about anything else either, but certainly not that.

Q What about Mr. Margolis, did you ever talk to him either before or after the declination letter with respect to the issue?

A No. No.

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Q Let me go back to the RTC issue again and contacts with EOUSA.

A Okay.

Q What are criminal coordinators within the RTC?

A You mean within the United States Attorney's Office?

Q No, I believe within the RTC.

A I believe I know what you have in mind. I'm sure within the RTC they had a program where they set up criminal coordinators who were supposed to be experts on making referrals and evaluating referrals and coordinating and that sort of thing. So they are just what you think they are. They are the people responsible for making criminal referrals or putting them together, coordinating what has to be done to get them in the law enforcement and in helping out after the referral is made. That was the idea of it.

Q And do you recall about when these criminal coordinators were --

A Put in place?

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Q Yes.
A Yes, pretty early in the program. I don't remember the year, but it was pretty early.
Q With respect to the contacts you mentioned about -- with respect to the policy -- priority program?
A Priority programs team.
Q Right. Would criminal coordinators be more likely to make those types of contacts with EOUSA than with field investigator?
A I don't know. I just don't know what their relationship was.
Q Let me ask you this question: You testified earlier that you thought Hale was saying the Whitewater Development Corporation had been involved in illegal activity with respect to SBA. And I think that was in the context of information that had come to you from, I guess, Mr. McDowell.
A Well, the notice of the specifics came from the FBI. There was certainly -- you know, conversation with Jerry, but the substantive information, as I recall it, came -- originated from

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the FBI.
Q FBI, okay. I just wanted to see if I could focus on the substantive information.
Did you mean to say Whitewater Development Corporation when you were talking about Hale's allegations with respect to Bill Clinton?
A I meant to. But the most accurate information would be from the bureau telex that came in, and from the memo that we did to Jack Keeney on September 21 that you showed me earlier. So that would certainly be the most accurate information.
MR. FISHMAN: Off the record.
(Discussion off the record.)
MR. FISHMAN: Back on.
THE WITNESS: So I have 002062, that I am looking at.
BY MR. IVEY:
Q And that's the September 21 memorandum?
A September 21, 1993 memorandum to the director of the FBI from John Keeney from the division -- well, yes, this is accurate. This is what I would have been told at the time.

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Q Okay, that it was --
A And that mentions Whitewater Development and Masters Marketing, $300,000 payment.
Q You mentioned that you had assigned Mr. Artbury, with respect to this issue of getting documents from RTC in Kansas City to the U.S. Attorney's Office; is that a correct recollection of your testimony?
A Don McKay, John Artbury had a role, I had a role. So John was involved in that, yes.
Q Did he ever come back and talk to you about what he had done with respect to that issue, what the problem had been?
A Well, I -- yes, I am sure he did. And there was E-mail traffic at the time, too, and there was contact that John had with the executive office for the U.S. Attorneys on the subject. So John and I were talking all the time in that period.
Q Can you recall what he said substantively?
A No.
Q I wanted to ask you about Mr. Hubbell's October 19th, '93 meeting with PLS in Washington.

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A Right.
Q Do you know what prompted the meeting?
A No.
Q You said you thought he knew some of those officials at PLS?
A Yes.
Q Do you know which ones he knew?
A No.
Q Do you know why you think he knew some of them?
A Yes.
Q Why is that?
A Because that's what I was told.
Q By whom?
A By the person in the RTC, his name I don't remember and don't know.
Q A person at this meeting?
A The Resolution Trust -- that's correct.
Q And it is your understanding that what Hubbell said at that meeting was that if there were problems in producing materials, that he asked essentially to -- he put himself out to help with

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what they were trying to do?
A Seemed like he was available for people to call if they were concerned about document requests or demands from the United States Attorneys. If they had a particular problem, it is just simply saying that he was available.
Q Do you know if he said anything about matters with respect to Arkansas in particular?
A No.
Q Do you know if he made any attempt to single out referral C0004 --
A No.
Q -- or any of the matters connected with Whitewater and Madison?
A No. No.
Q Do you recall the tenor of your friend's conversation with you?
A Sure.
Q Did he seem outraged?
A No.
Q I'm sorry?
A No. As I said earlier, he seemed to be

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interested in passing information, first inquiring who this person was or what the interests might be, that's my memory of it. And then, later, simply letting me know generally what had occurred during the course of the meeting. And none of that came back as being particularly interesting or exciting at the time, again.
Q I think you also said that Hubbell never gave any notice about the meeting, but you didn't attach any significance to the lack of the notice?
A I don't know what Hubbell did. I know I didn't get any notice and I don't know what his conversations may have been within the department with other people about it. But I didn't get any notice --
Q Okay --
A -- nor would I have expected to get any notice from him.
MR. IVEY: That's all for me.
EXAMINATION
BY MR. DINH:
Q I just have a couple of areas, and a couple

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of questions within each. Do the math on that one and I think we should be done in about 10 minutes.

As I told you before, my name is Viet Dinh and I am with the majority side and I took over from Mr. Chertoff, since he left the room.

Why don't I start with the information regarding the SBA. You stated to Mr. Ivey earlier that in ideal situations the investigator wants no information regarding their investigation, pending investigations to be in the public domain?

A Right.

Q Why is that?

A There are several reasons that you don't want investigatory information in the public domain. One is that you really don't want people that are being investigated tracking your investigation, and staying ahead of you as a result of tracking it. Another is that people have allegations made against them very often where ultimately there is no criminal culpability or law enforcement decides there is no case and that shouldn't be in the public domain, certainly not from the law enforcement side of the

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house. Maybe it comes out in a different way.

In terms of affecting witnesses who may be approached by law enforcement agents, some witnesses may not want to talk to you if they begin to think that the next thing they are going to do is read about what's going on and their involvement in it in the press.

Beyond that, they may not want people to know they are witnesses, as well. Those are some reasons, there are others.

Q Leaving aside the privacy interest of the target subjects or witnesses that ends up to be of no avail to the investigation, one of the reasons why you do not want information to be in the public domain is you do not want the target subjects or witnesses to affect their responses to investigation or to affect the investigation itself by beating it to the punch, as it were?

A In a lot of investigations that's true.

Q Now, with respect to the quality of the information that was given by the SBA to the White House, you stated earlier to Mr. Chertoff that you

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did not know whether they were confidential information, non-public information or public information, but they were simply information that was provided to the White House at the White House's request?

A That's correct.

Q And do you not know what kind of security procedures that were agreed to with respect to the White House and the SBA in the sense of keeping and maintaining the integrity of whatever information was provided to the White House?

A Sitting here today, I don't know. To the extent that any of that is relevant, I would have known it at the time, but I don't know sitting here.

Q I would like to direct your attention to Bates number 365, and the sub number is JDA 55, so I believe that would come from the time of your assistant, John Artbury?

A That's right.

Q It is a memorandum to the file documenting a meeting by Mr. Artbury, and others in the Justice Department, and FBI agents and representatives of the

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SBA regarding documents that were requested from the White House to be returned to the SBA and their subsequent transfer to the Justice Department. And if I can direct your attention to the last paragraph of that memorandum. And if you can read it for the record I would appreciate it?

A Sure. The last paragraph of the document, reads as follows: "It was learned during the meeting Mr. Spatel will fax today Mr. Eggleston a copy of the letter, from Erskine B. Bowles, administrator of the SBA, to the honorable John J. Lafalce," L-a-f-a-l-c-e, "Chairman, House Committee on Small Business," dated November 15, 1993. And a copy of the SBA's press release regarding Capital Management Services. It was suggested that the FBI would seek the return of the letter when its agent interviews Mr. Eggleston.

Q Could you read the footnote for me, that appears at the end?

A There is a footnote marked number 1, and it says, "the press release was a public document, and does not need to be returned."

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Q By negative implication from the footnote, does that refresh your recollection as to the quality of the information provided by the SBA to the White House as far as the public or not public nature?

A No, not by memory, but I am positive that the memorandum you have here is an accurate representation.

MR. FISHMAN: Is an accurate?

THE WITNESS: Is an accurate.

BY MR. DINH:

Q I must rephrase the question. By negative implication the footnote suggests that the information that was provided by the SBA to the White House was non-public information and that was information you were speaking to be returned to the SBA and to the Justice Department eventually?

A I think that's fair to say, that it would be SBA information that they were prepared to give to Congress but not put in the Washington Post. I mean -- yes, it is fair to say.

Q You said earlier that your judgment as to the propriety of the transfer of documents from the

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SBA to the White House depends on the motives of the person seeking the documents or of the person transferring the documents?

A It could.

Q Would an improper motive be the improper disclosure of information to subjects, targets and businesses of a pending SBA investigation?

A I think by stating the investigation -- saying it is an improper disclosure you have answered it. Sure.

Q Thank you.

I would like now to move to the RTC discussions that you talked about earlier. You mentioned that there were some problems with compliance with or production of documents in response to a subpoena that was issued to the RTC for documents relating to Madison Guaranty?

A There was an expression of concern by the United States Attorney's Office and Assistant U.S. Attorneys, as I recall, and the FBI that they wanted a faster return, yes.

Q In connection with this you made a call to

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Jim Dudine?
A I think it is Jim Dudine. I think he says his name is Dudine.
Q He is with the RTC?
A He is with the RTC. He is a senior person with the RTC and I came to know him as a member of the bank fraud working group that initially was responsible for enforcement.
Q He is based here in Washington, D.C.?
A Yes.
Q You don't know what his exact title or where its --
A Right now, no.
Q At that time, do you know what section he was in charge of?
A He was the head of enforcement in the Resolution Trust Corporation in those days.
Q Now, the problems you were having with documents from the Kansas City office relating to Madison Guaranty --
A Right.
Q -- and it was with the production of those

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documents. Do you know who reviews the documents for production, in response to a subpoena, in the RTC?
A Within the Resolution Trust Corporation? I -- not in every case. Usually, though, my understanding is they would usually have legal review in their office, in the local office, if they had attorneys available to do it.
Q Would the investigators be involved in the document review?
A Well, at some point, they --
Q They have documents, obviously?
A They are collecting them and putting them in the package that would be under consideration to go with the referral, assuming you get documents, but you have the referral itself and allegations in it.
Q I mean, in response to a subpoena, who would be responsible for determining what documents were relevant to that subpoena and what is the scope of the subpoena?
A Typically they assign lawyers to do that within the RTC, and not infrequently, in those days, it could take a long time within a given office to

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get a lawyer assigned and then to get the lawyer to do the review and then to get the documents.

Q But it would be a lawyer doing the review response, typically, to subpoena?

A On issues of privilege, it should be a lawyer. And within a given office, you know -- again, from the RTC point of view, you don't know what they are going to do in reviewing it, but ordinarily it would be a lawyer.

Q I just want to make some things clear for the record because I think the discussion earlier with Mr. Ivey dealt with both the leaks to the press and the dealings with the document production in the RTC.

You mentioned that you had heard Jean Lewis's name come up in reference to a document -- the document production issues as the investigator in Kansas City responsible for Madison Guaranty?

A I don't know if I heard it -- I believe so, yes.

Q To the best of your knowledge or recollection, were there any discussions within the

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Justice Department regarding Jean Lewis as being the source of press leaks of confidential information?

A I think her name was mentioned as someone who was suspected as possibly the source of leaks. And I've got to tell you, I don't know of any information that evidenced that she, in fact, was, but I do remember that her name had come up. And I believe that some within the FBI suspected that she was leaking information to the press, but I don't know that anybody had an objective basis for that. I don't believe I ever saw any evidence that demonstrated that. So I don't know whether she did or not.

Q So there is no confirmation of any press leaks by Jean Lewis?

A Not that I know of.

Q At one point there was some discussion regarding the inadequacy of referrals and the complaints from the Justice Department or the U.S. Attorney's Office regarding referrals. To the best of your knowledge and recollection, were there any complaints, that you know of, regarding referrals

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filed by Jean Lewis?
MR. FISHMAN: Generally or the ones in this case?
BY MR. DINH:
Q The ones in this case.
A In terms of quality or in terms of timing --
Q In terms of quality.
A I don't recall a complaint on the quality.
Q And referrals, I take it, gets declined quite often, or how frequent is the -- are referrals declined, are they infrequently, almost never?
A Just roughly, I would estimate, that the majority, the substantial majority of referrals do not result in criminal prosecutions.
Q They get declined?
A Correct. If they even get opened.
Q Keeping in mind the -- well, what is the normal rate of turnover for these declines? How much time typically or -- and I know that is a loaded word -- in the usual course does a referral take to be declined, if it is --

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A There is no usual course. That is an honest answer to that. There is no such thing.
Q It depends on the specific case with the allegations?
A That's right.
Q But you said earlier that it is not the -- it is not infrequent that they contact the U.S. Attorney's Office in order to follow up on the progress of their referrals, especially given some time has lapsed with respect to those referrals?
A That's true.
Q And for them to follow up beyond the U.S. Attorney's Office in order to find out what the status of those referrals are, if that referral has indeed traveled beyond the U.S. Attorney's Office?
A That's probably more unusual. I would think that most contacts would be dealing with the U.S. Attorney and the FBI locally.
Q But given that they have information that the referrals are now out of the hand of the U.S. Attorney's Office, is it logical for the investigators to pursue that in order to find out the

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status of the referral?
A Sure.
Q I would like now to move on toward the discussions earlier regarding your negotiations with Mr. Kendall, and just to put you in proper time frame I will not ask any questions regarding those negotiations. But do you recall at around that time any discussions within the Justice Department regarding a missing Whitewater file? You had stated earlier Whitewater Development Corporation was a specific area of interest to you. Do you recall any discussions regarding a missing Whitewater file?
A No.
Q You stated you worked with Mr. McDowell, I take it?
A Yes.
Q And you testified earlier that you and he have a working relationship such that you do discuss your areas of investigation?
A Right.
Q I hope to refresh your memory with notes that were recently produced to us, and I believe

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these are notes kept by Joe Gangloff. Can you state for the record who Joe Gangloff is?
A Joe Gangloff is a deputy section chief currently in the public integrity section.
Q And specifically, these are Bates stamps A 845, A 846, and A 847. And to the extent I can read these notes they have 12/26 at the top, 10:20, and then actually at the bottom below that, has 12/20, and then listing JAM -- JAH, JCK, GMD, JG and D. Margolis.
A One thing, at the time that occurred Gangloff was the acting chief of public integrity section.
Q Thank you.
Now, given that listing -- actually, let me just ask you to identify the listing of people, JAH?
A Joanne Harris.
Q JCK?
A Jack Keeney and then Jerry McDowell.
Q JG?
A Joe Gangloff.
Q And D. Margolis?

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A I would think David Margolis.
Q Let me read here, among other things, what is addressing "missing Whitewater file," and then some mention of the travel office investigation, and then a question, "what is now opened? Fraud" underlined, and then something that's illegible and then "SBA. Kennedy/Lindsey interview today." Something that's illegible.
MR. IVEY: You want to give it to him?
THE WITNESS: That's all right.
BY MR. DINH:
Q Somebody that's illegible "to contact Shaheen," S-h-a-h-e-e-n, "re: Missing Whitewater file." And then the next line, arrow pointing to "JAH," Joanne Harris, "look for the file. McD contact Shaheen. Nussbaum made interesting" something illegible "personal paper torn" and then "Hamilton" underlined at the bottom.
Does that refresh your memory as to any conversations you may have had with Mr. McDowell regarding this meeting on the -- on 12/20?
A The meeting that is the subject of the

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notes you have been reading?
Q Yes.
A No.
Q You had no discussions with Mr. McDowell regarding the search for any missing Whitewater file?
A Missing Whitewater file, no, not that I remember. I don't know what missing Whitewater file they are talking about there and whether they are talking more generally about Whitewater files taken out of the White House -- that we were trying to get from Kendall and trying to get from Lisa Foster's attorney if they existed. I just don't know -- or whether that was a reaction to some newspaper article at the time talking about files being taken out of the office.
Q Who is Shaheen?
A Mike Shaheen is the head of the office of professional responsibility in the Department of Justice.
Q Finally, just to return back to the question of the Hubbell contact, I just want to pin down a little more as to how we can further pursue

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this.

You stated that it was in October '93. Do you recall whether it was in the beginning of October, '93 or end --

A End of October, toward the end of October.

Q End of October?

MR. FISHMAN: For the record, I am relatively certain that we have provided documents to the committee that include Mr. Hubbell's calendar that reflect that meeting. And so if that will save the committee time and save us time this evening, I am relatively sure that contact is detailed on his calendar.

THE WITNESS: I might add in relating this to you that I am relating it to you because of the timing toward the end of the month and activities that were occurring. I would not have seen this as having anything to do with anything. You are even looking at in the ordinary course -- going through my E-mail records, and our processing, going to a new job. There are two items that relate to this, both of them are E-mails, neither one of them identifies

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the RTC person, and I have seen those and they fix the date and I believe it is the end of October, the 27th, the 28th.

BY MR. DINH:

Q You state you wrote an E-mail to Mr. Urgenson regarding this?

A That's correct.

Q Actually, just to go back -- why do you think the timing at the end of October is relevant?

A I have no idea whether it is relevant or not.

Q But what made you -- what about the timing at the end of October --

A I think the significance of it, if there is any significance at all, is that this person ultimately had some problems as a result of his involvement with his law firm, and he had some involvement with the Resolution Trust Corporation. Whether or not there is anything to that or not, beyond what it appears to be, is something I just don't know.

Q I guess I was asking what specifically

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about the end of October, we know -- what specifically about the end of October triggered that in your mind?

A It is on the eve of the recusal. I mean, a lot was going on toward the end of the month. You've got the referrals coming in from the Resolution Trust Corporation to the United States Attorney's Office.

Q Was this after the referrals?

A It is about the same period of time.

MR. DINH: I have nothing further.

MR. IVEY: Very briefly.

EXAMINATION

BY MR. IVEY:

Q With respect to Mr. Hubbell's meeting with PLS, do you know if he had any other meetings with PLS other than this meeting in late October of 1993?

A I don't know.

Q Do you know if he had regular meetings with PLS?

A I don't know.

Q You were also asked a moment ago about any comments within the Department of Justice about the

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quality of referrals. And I wanted to hand you this document, it is Bates stamped 4275 and it also has a number at the bottom GAC 1295.

A It came out of my files.

Q It is an E-mail, looks like to me it's dated October 12, 1993 and it's got -- and it's from McDowell.

A It's a routing saying it is from McDowell.

Q Okay. Is this an E-mail from Mr. McDowell?

A This is an E-mail by him based on the cover of --

Q Do you know if it was to you or not?

A I don't know if it was to me or not. I am positive I had it because I had my files.

Q What is Mr. McDowell's position in the Justice Department?

A Jerry McDowell at that time was the section chief for the fraud section of the criminal division.

Q Is he someone who has seen a lot of criminal referrals during his tenure at the Justice Department?

A Well, he headed a couple of organized crime

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and racketeering units out in the field for a number of years. And then he was the chief of the public integrity section. And then he was the chief of the fraud section. And now he is the chief of the asset forfeiture and money laundering section of the department, so he's seen criminal referrals of a wide variety or allegations of a wide variety. In terms of fraud institution referrals in particular he would not ordinarily see a referral form.

Q Let me read part of this to you: "The single greatest frustration in the case so far has been the failure of the RTC to provide the documents to the grand jury. Johnson has talked to Phil Adams, RTC counsel in Kansas City, the regional office covering Little Rock. Adams told Johnson that the documents in the proposed referrals had been reviewed in Washington, D.C. HQ, and had been sent back to Little Rock for finishing touches. Johnson expected the file shortly, but they never came. He finds this very frustrating because the RTC referral is of very limited usefulness when the USA is familiar with the case and what they need is the underlying documents.

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Also" -- and this is particularly the part I wanted to bring your attention to the previous RTC referral last year in this matter -- "the RTC local lawyer was of dubious value, nearly useless referral, tail wagging a valuable dog."

A This is from Johnson?

MR. FISHMAN: That was from McDowell.

THE WITNESS: Talking about his conversation with Johnson as I understand it, right.

BY MR. IVEY:

Q I left out a line here, "was of dubious value and drew highly speculative" -- I am getting the document. No, I am not getting it. Now I am copying it in now. Starting again. In this matter the same RTC local lawyer "was of dubious value and drew highly speculative conclusions. Essentially you have a nearly useless referral, tail wagging a valuable dog."

So just briefly then, does this sound like a comment on the 1992 referral C0004?

A The initial part of it that you were talking about sounds like he was expressing the view

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of the 1992 referral, and he didn't find it particularly impressive, yes.

MR. IVEY: That's all for me.

EXAMINATION

BY MR. DINH:

Q I just wanted to ask one quick follow-up question. The bulk of what Mr. Ivey has just read to you concerned the frustration with Justice Department with respect to the production of documents from the RTC --

A You mean the United States Attorney's Office?

Q Right, I'm sorry. With respect to the production of documents by the RTC, not -- that's the way I understand the document, but the concern at that point was to get documents. And if I understood that correctly, too, he was referring to potential referrals?

A Right. I think he makes a reference there that he's expecting more of what he wants. What he wants is he wants his documents relating to Hale.

Q So by "a useless tail" -- "a useless

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referral, tail wagging a valuable document dog" is more a statement as to how valuable the documents are because the referral is useless only because the USA in this case is already familiar with the facts of the case?

A I think it is apples and oranges. I think you are talking two things. He is talking Hale, he wants documents on Hale and then he alludes to any earlier referral sort generically or generally, and expresses his view. That's how I interpret it. I don't know what he meant. He is the person who was talking, but that's -- my sense of it is and it is a general attitude that you want hard information and it is more valuable than somebody's impressions.

Q I simply want to make clear the dispute over the production of documents and whatever impression one may glean as far as the quality of the referral.

A Again, you would have to speak to him.

MR. DINH: Thank you.

(Whereupon, at 8:06 p.m., the deposition was concluded.)

GEORGE A. CARVER

CERTIFICATE OF NOTARY PUBLIC & REPORTER 228

I, JOANNE LIVERANI , the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Joanne Liverani

Notary Public in and for the
District of Columbia

My Commission Expires JULY 31, 2000

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11	19	fraud	Fraud	
11	20	section	Section	
12	5	public	Public	
12	6	integrity section	Integrity Section	
12	17	deputy chief	Deputy Chief	
12	17	fraud section	Fraud Section	
12	18	criminal division	Criminal Division	
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12	21	Jerry	Gerry	
13	9	criminal division	Criminal Division	
13	13	Never	November 1993	*
14	3, 7	arr bury	Arterberry	
14	3	deputy section chief	Deputy Section Chief	
14	6-7, 11	fraud section	Fraud Section	
15	4	for the United	for United	
15	5, 10	fraud Section	Fraud Section	

* Upon Paula Casey's recusal in November 1993, I first became involved in any investigation involving Madison Guaranty. For example, see page 74, lines 15-22 and page 75, lines 1-4 of the transcript.

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18	1	associate	Associate	
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20	2	bank task	bank fraud task	
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28	14	principal associate	Principal Associate	
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34	13-14	fraud section	Fraud Section	
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36	19	Jerry	Gerry	
37	1	McKay	Mackay	
38	4	bureau	Bureau	
38	9	acting	Acting	
38	10	chief of the public integrity section	Chief of the Public Integrity Section	
39	3-4, 22	fraud Section	Fraud Section	
40	12	fraud section's	Fraud Section's	
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50	8	Jerry	Gerry	
51	5	criminal division	Criminal Division	
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52	17	arr bury	Arter berry	
53	9, 10	bureau	Bureau	
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57	20-21	fraud section	Fraud Section	
58	7	fraud section	Fraud Section	
59	2	associate	Associate	
59	3	criminal division	Criminal Division	
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63	11	fraud section	Fraud Section	
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68	5	criminal division	Criminal Division	
69	7	department	Department	
69	9	division	Division	
69	22	criminal division's	Criminal Divisions	
70	14	either decided	either to decide	
70	16	department	Department	
70	22	fraud section of the criminal	Fraud Section of the Criminal	
71	1	division or in the criminal division	Division or in the Criminal Division	
71	17	fraud section	Fraud Section	
72	2	fraud section	Fraud Section	
74	17	fraud section	Fraud Section	
74	17	McKay	Mackay	
75	1	fraud section	Fraud Section	
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98	12	chick of staff	Chick of Staff	
gac 98	14	~~recollection at~~	~~recollection of AT~~ e	
99	9	department	Department	
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PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
105	4,5	department	Department	
105	12	Jerry	Gerry	
105	14	not contacting	contacting	
105	17	criminal division	Criminal Division	
112	6	independent counsel	Independent Counsel	
120	7	bureau	Bureau	
121	9	McKay	Mackay	
121	12	bureau	Bureau	
123	14	McKay	Mackay	
125	9,14	Jerry	Gerry	
125	19	bureau	Bureau	
130	12	mean go	mean to go	
130	12	court or	court with or	
130	13	court and	court with and	
131	1	your	you are	
131	22	December	November	
135	15	McKay	Mackay	
138	15	deputy's	Deputy's	

gac

gac Jr
7/8/96

DEPONENT GEORGE ALLEN CARVER, JR.
- George Allen Carver, Jr.

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PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
139	9	director	Director	
139	11-12	principal associate deputy	Principal Associate Deputy	
139	12	associate deputy	Associate Deputy	
139	14	associate	Associate	
139	15,16,21-22	criminal division	Criminal Division	
139	19	department	Department	
140	5,8	acting	Acting	
140	22	deputy	Deputy	
140	22	office	Office	
141	1	office	Office	
141	11	deputy	Deputy	
141	12	office	Office	
141	13	associate	Associate	
142	4	office	Office	
142	21	fraud section	Fraud Section	
143	6,19,22	fraud section	Fraud Section	
143	7,8,12,14,19	criminal division	Criminal Division	
143	7	section	Section	

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7/8/96

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- Geo Allen Carver, Jr.

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143	13	acting	Acting	
143	15	Jerry	Gerry	
143	17	department	Department	
143	18	acting deputy	Acting Deputy	
143	22	theme	theme	
144	1	Addressed/	addressed	
144	1,4	division	Division	
144	5	criminal division	Criminal Division	
145	9	criminal division	Criminal Division	
145	10	fraud section	Fraud Section	
145	21	acting	Acting	
145	22	office	Office	
148	8	fraud section	Fraud Section	
152	2	Jeanne	Jo Ann	
152	3	Jerry	Gerry	
152	12	McKay	Mackay	
152	15	Artbury	Arterberry	
155	5	independent counsel	Independent Counsel	

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- Geo Allen Carver, Jr.

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PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
157	17	Artbury	Arterberry	
158	20-21, 22	general counsel	General Counsel	
159	10	counsel's office	Counsel's Office	
160	11	McKay's	Mackay's	
163	21	department	Department	
164	8	Jerry	Gerry	
165	16	that has	that it has not	
166	12	pleas	press	
169	13	Reform Recovery	Reform, Recovery, and	
169	14	Acts	Act	
169	19	work	worked	
169	19	executive office	Executive Office	
169	19	attorneys	Attorneys	
169	20	special counsel, financial	Special Counsel for Financial	
169	21	institution fraud	Institution Fraud	
170	21	attorneys offices	Attorneys' Offices	
170	21	executive	Executive	
170	22	office for U.S. attorneys	Office for U.S. Attorneys	

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DEPONENT GEORGE ALLEN CARVER, JR.
- George Allen Carver, Jr.

gac 7/8/96

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PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
171	3	borrower	borrowers	
172	9	special agents in charge	Special Agents in-Charge	
172	13	special counsel for financial institution fraud	Special Counsel for Financial Institution Fraud	
172	14	administrative	administratively	
172	19	could you	you	
172	20	executive office of the	Executive Office for	
173	17	attorneys	Attorneys	
176	4	bureau	Bureau	
178	5-6,6	fraud section	Fraud Section	
178	15	inspector general	Inspector General	
179	16	special agent in charge	Special Agent in-Charge	
180	1-2	special agent in charge	Special Agent in-Charge	
180	3	designation	designee	
180	10	started,	started	
180	11	FIRREA	FIRREA,	
181	3	bank fraud task force	Bank Fraud Task Force	
183	16	1833A	1833a	
183	21	was notion	was the notion	

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1-18-96

DEPONENT GEORGE ALLEN CARVER, JR.
- gac Allen Carver, Jr.

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PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
184	13	in	and	
184	19	Working Group	working group	
186	6	bureau	Bureau	
188	15	Department	Deposit	
190	18	fraud section	Fraud Section	
192	15,16	fraud	Fraud	
193	2	executive office	Executive Office	
194	7	fraud section	Fraud Section	
194	7	criminal	Criminal	
194	8	division	Division	
194	8	civil division	Civil Division	
197	21	Jerry	Gerry	
198	8	bureau	Bureau	
198	20	director	Director	
198	21	division	Division	
199	5,9	Artbury	Arterberry	
199	9	McKay	Mackay	
199	16	executive office	Executive Office	

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- George Allen Carver, Jr

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PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
205	18, 21	Arthury	Arrerberry	
216	3	deputy section chief	Deputy Section Chief	
216	4, 12-13	public integrity section	Public Integrity Section	
216	12	acting chief	Acting Chief	
216	17	Joanne	Jo Ann	
216	19	Jerry	Gerry	
217	15	Joanne	Jo Ann	
218	17-18	office of Professional Responsibility	Office of Professional Responsibility	
219	9, 11	committee	Committee	
219	20	our	out	
222	14	had my	had it in my	
222	17	Jerry	Gerry	
222	17-18	section chief	Section Chief	
222	18	fraud section	Fraud Section	
222	18	criminal division	Criminal Division	
223	2	chief of the public	Chief of the Public	
223	3	integrity section	Integrity Section	
223	3	chief	Chief	

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7/8/96

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- George Allen Carver, Jr.

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PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
223	4	fraud section	Fraud Section	
223	4	chief of the asset	Chief of the Asset	
223	5	forfeiture and money laundering section	Forfeiture and Money Laundering Section	
223	6	department	Department	
226	9	referral sept	referral	
				gac Jr

Military Service

Enlisted service in the U.S. Army (January 7, 1959 through July 4, 1960)

Cadet, U.S. Military Academy (July 5, 1960 to June 3, 1964)

Infantry Officer, U.S. Army (June 3, 1964 through August 1, 1969)

Ranger and Airborne schools

82D Airborne Division (December 31, 1964 to September 1967)

Dominican Republic (while with the 82D) (May 3, 1965 through June 26, 1965; January 10, 1966 through August 7, 1966)

Vietnam (September 15, 1967 to September 9, 1968)

The Infantry School, Fort Benning, GA (October 28, 1968 to August 1, 1969)

Law School

University of Virginia School of Law (August 1969 to June 4, 1972)

Department of Justice Employment

Legal Clerk, Internal Security Division, Analysis and Evaluation (June 4, 1971 - September 4, 1971) (summer job while in law school)

Trial Attorney, General Crimes Section (July 31, 1972 to March 15, 1976) (headed the Integrity Unit beginning in 1974)

Trial Attorney, Public Integrity Section (charter member) (March 15, 1976 to May 22, 1981); Director, Conflicts of Interest Crimes Branch, Public Integrity Section (May 22, 1981 to March 13, 1988)

Deputy Chief, Fraud Section (March 21, 1988 to May 14, 1991)

Principal Deputy Chief, Fraud Section (May 14, 1991 to October 15, 1995) (appointed to the Senior Executive Service April 19, 1992)

Senior Counsel to the Chief of the Asset Forfeiture and Money Laundering Section (October 15, 1995 to the present)

Chronology Re: Madison Guaranty S&L Ass'n

September 1992

9/1/92 -- Resolution Trust Corporation ("RTC") letter to the U.S. Attorney's Office, Little Rock, Eastern District of Arkansas, forwarding RTC Criminal Referral # C0004. (See the attached overview of the referral.)

9/2/92 -- Little Rock U.S. Attorney's Office received the RTC letter and the referral.

October 1992

10/6/92 -- Little Rock U.S. Attorney's Office faxed a copy of RTC Criminal Referral # C0004 to the Executive Office for U.S. Attorneys ("EOUSA").

10/7/92 -- Urgent Report from Laurence McWhorter, Director, EOUSA, addressed to Attorney General William Barr, with copies for Deputy Attorney General George Terwilliger, and Associate Attorney General Wayne Budd, forwarding a copy of RTC Criminal Referral # C0004 and reporting that Governor and Mrs. Clinton were named in the referral as "witnesses who may have information regarding the suspected criminal activities." The Urgent Report further reported that "It is the belief of the United States Attorney's Office that further investigation into this matter is warranted." (But see the note below regarding U.S. Attorney Banks' letter of 10/16/92.)

10/10/92 -- Laurence McWhorter's memorandum to Messrs. Barr, Terwilliger and Budd, captioned "Referral from the Resolution Trust Corporation," with copies designated for Robert Mueller and Paul McNulty, reporting on the Little Rock U.S. Attorney's Office receipt of RTC Criminal Referral # C0004.

10/14/92 -- An information copy of the 10/7/92 Urgent Report and RTC Criminal Referral # C0004 was received in the Fraud Section and assigned by Fraud Section Chief Paralegal Specialist Audrey Word to Fraud Section Deputy Chief John Arterberry.

10/16/92 -- Little Rock U.S. Attorney Charles A. Banks' letter to Don Pettus, Special Agent in-Charge, Little Rock Division, FBI, regarding RTC Criminal Referral # C0004, expressing doubt about any prosecutive potential, advising that the U.S. Attorney's Office would not open an investigation prior to the upcoming presidential election, but indicating that the U.S. Attorney's Office was willing to discuss with the FBI, after the election, whether to conduct a preliminary investigation. (See the attached overview of the letter.)

10/16/92 -- Little Rock FBI teletype to the Director of the FBI, attention Assistant Director Larry Potts, reporting that the Little Rock FBI was not opening an investigation. According to the teletype, in the period 10/9-16/92, the Little Rock U.S. Attorney and the Little Rock FBI reviewed RTC Criminal Referral # C0004 and all of the approximately 300 exhibits furnished by the RTC, and the Little Rock FBI and Little Rock U.S. Attorney were in agreement that there was no factual basis suggesting that any of the individuals named in the referral as witnesses had engaged in criminal activity.

The teletype further reported that the Little Rock U.S. Attorney believed that the referral indicated the possibility of criminal activity by James and Susan McDougal, and Lisa Anspaugh, but he was holding in abeyance giving a prosecutive opinion about any of those individuals.

The teletype reported also that the Little Rock FBI was not going to open an investigation without the concurrence of the U.S. Attorney and his positive prosecutive opinion.

10/19/92 -- Note to "Bob" [evidently Criminal Division Assistant Attorney General Robert Mueller] from "Larry" [evidently Assistant Director Larry Potts, Criminal Investigative Division, FBI] on the letterhead of the Office of the Assistant Director, Criminal Investigative Division, FBI, stating, " Here is a teletype re the McDougal case in Little Rock. I have discussed with the SAC and agree with the contents of this teletype ie no investigation is justified at this time."

10/20/92 -- Urgent Report from Director McWhorter, EOUSA, addressed to Attorney General Barr, updating the October 7 Urgent Report and forwarding a copy of U.S. Attorney Banks' October 16 letter.

10/23/92 -- Criminal Division routing slip, evidently from Assistant Attorney General Robert Mueller, to Deputy Assistant Attorney General John C. Keeney, Criminal Division, marked "FYI" and bearing what appears to be J.C. Keeney's handwritten note saying "Gerry McDowell FYI" and "I don't see us as involved at this point. Bureau's position is reasonable." The routing slip, along with the "Larry" to "Bob" note and the Little Rock FBI teletype outlined above, were forwarded to the Fraud Section on or about 10/23/92.

January 1993

1/27/93 -- U.S. Attorney Banks' letter to EOUSA, enclosing a copy of his October 16 letter, and maintaining that any decision to be made on what to do with RTC Criminal Referral # C0004 should be made in Main Justice to avoid any appearance of conflict-of-interest which might exist if his office were to undertake

another prosecution of James McDougal, and advising that he had resigned his position as U.S. Attorney effective March 1, 1993. (See the attached overview of the 1/27/93 letter.)

February 1993

2/9/93 -- Memorandum from Anthony Moscato, Director, EOUSA, addressed through "Principal Associate Deputy Attorney General," Douglas Frazier to Stuart Gerson, Acting Attorney General, reporting on U.S. Attorney Banks' letter of January 27, and forwarding copies of the following documents: the letters from U.S. Attorney Banks dated 10/16/92 and 1/27/93, respectively; the two EOUSA Urgent Reports dated 10/7/92 and 10/20/92, respectively; and RTC Criminal Referral # C0004.

The Moscato memorandum reported that U.S. Attorney Banks had resigned effective 3/1/93 and wanted his office recused from handling RTC Criminal Referral # C0004. The memorandum listed three alternatives for the Acting Attorney General to consider: (1) keep the referral in the Little Rock U.S. Attorney's Office; (2) reassign the referral to some other component of the Department of Justice; or (3) "other."

According to an Executive Secretariat Control Data Sheet, the Moscato memorandum left the EOUSA 2/11/93, and there was a due date of 2/24/93.

...

2/18/93 -- Memorandum from "Associate Deputy Attorney General" Douglas Frazier, addressed to Criminal Division Acting Assistant Attorney General J.C. Keeney, asking for a review of and recommendation on a recusal package consisting of the Moscato memorandum and its attachments: copies of U.S. Attorney Banks' letters of 10/16/92 and 1/27/93; copies of EOUSA's Urgent Reports of 10/7/92 and 10/20/92; and a copy of the RTC Criminal Referral # C0004. (See the attached overview of both the Frazier memorandum and the Moscato memorandum.)

According to the Executive Secretariat Control Data Sheet mentioned above, the Frazier memorandum and the recusal package left Douglas Frazier's office 2/19/93 (Friday), and arrived somewhere in the Criminal Division front office the same day.

2/22-25/93 (Monday-Thursday) -- G. Allen Carver, Jr., Principal Deputy Chief, Fraud Section, was on travel, San Diego, California.

2/22/93 (Monday) -- Correspondence tracking records show Laurence Urgenson, Acting Deputy Assistant Attorney General, Criminal Division, as addressee of the Frazier memorandum and recusal package, and that the materials were received in the Criminal Division front office.

2/22/93 (Monday) -- Correspondence tracking records show G. McDowell as addressee of the Frazier memorandum and recusal package, and that the materials were received in the Fraud Section.

2/23/93 (Tuesday) -- Memorandum to G. McDowell by Fraud Section Trial Attorney Mark MacDougall, noting that G. McDowell had asked M. MacDougall for an analysis of the recusal package, and concluding that the materials supplied by Douglas Frazier did not call for a criminal investigation. (See the attached overview of the MacDougall memorandum.)

March 1993

3/2/93 (Tuesday) -- A draft memorandum prepared for signature of J.C. Keeney and addressed to Douglas Frazier was typed in the Fraud Section; a copy was initialed by G. McDowell and G. Carver. G. Carver wrote the draft memorandum. (See the attached overview of the memorandum.)

3/2/93 (Tuesday) -- Correspondence tracking records indicate that the Fraud Section's draft memorandum for J.C. Keeney to consider, and the MacDougall memorandum, were received in the Criminal Division front office by or for L. Urgenson.

3/19/93 -- A date-stamped copy of the J.C. Keeney to Douglas Frazier memorandum indicates that L. Urgenson signed the memorandum for J.C. Keeney. According to the memorandum, the Criminal Division (1) saw no grounds for recusing the Little Rock U.S. Attorney's Office from handling RTC Referral # C0004, (2) would not question a decision by the U.S. Attorney's Office to decline the matter, and (3) was forwarding a copy of the MacDougall memorandum for Douglas Frazier to send to the U.S. Attorney's Office if he wished.

June 1993

6/?/93 -- RTC internal memorandum from L. Richard Iorio to Lee O. Ausen, RTC Office of Inspector General (Investigations) ("OIG"), referring to a 6/8/93 telephone call from Donna Henneman, EOUSA, who had told the RTC OIG: (1) that RTC Criminal Referral # C0004 had reappeared on her desk; (2) A. Word had located a copy in the Fraud Section, but "the individual assigned to the referral... didn't want to deal with it," so A. Word had sent the referral and all pertinent information to D. Henneman for handling.

According to the RTC memorandum, D. Henneman told the RTC OIG that she had talked with Douglas Frazier, who said that he did not recall the memorandum [most likely the referral package and Criminal Division materials prepared in response, but unclear from the Iorio memorandum] and asked that D. Henneman send him what she had for "review and a final decision."

The Iorio memorandum further said that D. Henneman had told the RTC OIG that she had sent her materials to D. Frazier and would keep the RTC OIG posted; the RTC OIG in turn had told her that it had additional information supporting allegations contained in RTC Criminal Referral # C0004 and wanted a written communication from the Department of Justice stating what action was to be taken in response to the referral.

September 1993

9/17/93 -- A Little Rock FBI telex regarding David Hale, reporting a need for RTC assistance/cooperation.

9/20/93 -- G. Carver faxed to J.C. Keeney a copy each of the March 19, 1993, Criminal Division memorandum addressed to Douglas Frazier and the M. MacDougall memorandum.

9/21/93 -- Meeting -- G. Carver; J. Arterberry; Fraud Section Senior Trial Attorney (now Senior Litigation Counsel) Donald Mackay; Fraud Section Trial Attorney Dwight Bostwick. (There was discussion about the possibility of the Fraud Section's handling any investigation resulting from David Hale's allegations.)

9/29/93 -- G. McDowell, G. Carver, Public Integrity Section Acting Chief Joe Gangloff, and Public Integrity Section attorney Jo Ann Farrington together met with three FBI officials -- Tim Dortch, Jane Erickson and Rick Wade. (The tentative assignment of the Hale matter to D. Mackay and D. Bostwick evidently was mentioned.)

October 1993

10/4/93 -- G. McDowell's email -- mentioned that the Little Rock U.S. Attorney was still running the Hale case.

10/8/93 -- RTC sent/gave nine new criminal referrals relating to Madison Guaranty Savings & Loan Association to the Little Rock U.S. Attorney's Office and to the Little Rock FBI.

10/13/93 -- RTC Kansas City Office's memorandum to the EOUSA forwarding copies of RTC summaries of the nine RTC criminal referrals.

10/15/93 (about) -- Little Rock FBI received copies of the nine criminal referrals.

10/19/93 -- L. Potts' memorandum to J.C. Keeney, outlining various allegations associated with David Hale and others, and reporting that they were being vigorously pursued.

10/27/93 -- Little Rock U.S. Attorney Paula Casey declined RTC Criminal Referral # C0004. (See the attached copy of an article published in The Wall Street Journal, dated 8/8/95, p A-12)

10/28/93 -- J. Arterberry met with G. Carver, who mentioned (1) that G. McDowell had done a memorandum to the FBI at J.C. Keeney's request, which G. Carver had reviewed; and (2) J.C. Keeney wanted an Urgent Report done.

10/28/93 -- J.C. Keeney's Urgent Report for the Attorney General and the Deputy Attorney General. (Evidently the report was based in large part on the Potts memorandum of 10/19/93.)

10/29/93 -- Memorandum by Ron Dick, Chief of the Financial Institution Fraud Unit, White Collar Crimes Section ("WCCS"), FBI, supplying background information on the Little Rock FBI's receipt of the nine referrals.

November 1993

11/1/93 -- Fax from Thomas Kubic, Chief, WCCS, FBI, addressed to G. McDowell, forwarding a copy of R. Dick's 10/29/93 memorandum.

11/1/93 -- J.C. Keeney's Urgent Report to the Attorney General and the Deputy Attorney General, advising in part that the Little Rock U.S. Attorney [Paula Casey] had not yet requested any assistance from the Criminal Division.

11/5/93 -- G. McDowell's email forwarding Principal Associate Deputy Attorney General Irving Nathan's email saying that Little Rock U.S. Attorney Paula Casey was recusing her office.

11/5/93 -- Little Rock U.S. Attorney Casey's letter recusing her office from handling any Madison Guaranty-Whitewater-David Hale related matters or cases.

11/5/93 -- G. Carver told J. Arterberry that Little Rock U.S. Attorney Casey had recused her office, D. Mackay was to go to Little Rock 11/9/93, D. Bostwick also might go, but J. Arterberry was to talk with Deborah Smith first.

11/8/93 -- G. McDowell email saying Little Rock U.S. Attorney Casey had told him she wanted a prompt transfer; G. McDowell sent G. Carver a copy of P. Casey's 11/5/93 recusal letter.

11/9/93 -- Department of Justice press release announcing the recusal and D. Mackay's assignment to head a team from the Fraud Section to handle the recusal.

November 9, 1993 - December 1993 -- The Fraud Section team did a substantial amount of work in Little Rock; G. Carver had contacts with Rick Wade from FBI Headquarters regarding interviews of several White House officials regarding their involvement in receiving various documents from the Small Business Administration and contacts between Randy Coleman (David Hale's attorney) and Kennedy of the White House staff; on G. Carver's instructions, the Fraud Section team made almost daily reports to J. Arterberry or G. Carver, or both.

December 1993

12/13/93 -- G. McDowell's routing slip to J.C. Keeney and David Margolis, marked "file," regarding Little Rock U.S. Attorney Casey's decision to recuse her office.

12/21/93 -- G. Carver's email to G. McDowell about G. Carver's request to Rick Wade to get documents from D. Kendall mentioned in the Wall Street Journal, and to ask D. Kendall to waive privilege if he raised it; reported that G. Carver had asked the Fraud Section team to draft a subpoena to serve on D. Kendall if he failed voluntarily to produce Whitewater-related materials; further reported that Richard Rogers of the Office of Professional Responsibility had been notified. (R. Rogers and Judith Wish of OPR were copied on the email.)

12/22/93 -- G. Carver's email to G. McDowell amplifying an earlier oral report regarding conversation with Little Rock U.S. Attorney Paula Casey about a House Banking Committee staff request to her for access to her office's McDougal files.

12/23/93 -- G. Carver, Criminal Division Deputy Assistant Attorney General Merrick Garland, Criminal Division Assistant Attorney General Jo Ann Harris, G. McDowell telephone conversation about obtaining White House documents -- G. Carver outlined an approach: G. Carver and the FBI would call D. Kendall and request materials relating to Whitewater Development Corporation, Madison Guarantee, and David Hale, would tell him there was a subpoena addressed to him for Whitewater documents and we wanted to be able to serve him, were willing to receive documents from him directly, but wanted his written confirmation of full production of materials called for by subpoena or oral request; G. Carver and the FBI would call J. Hamilton and request the Foster diary and materials received from the White House relating to Whitewater, Madison and Hale; Assistant Attorney General Harris approved using subpoena.

12/23/93 -- G. Carver, Fraud Section Trial Attorney James Nixon and FBI agents together spoke with D. Kendall (two separate telephone conversations) -- he said he wanted a subpoena for all documents, including privileged ones -- FBI served him 12/24/93.

12/23/93 -- G. Carver and FBI spoke with J. Hamilton; initially talked about voluntary production, but later told him subpoena -- FBI served him 12/23/93.

12/27/93 -- G. Carver told M. Garland that the Hamilton and Kendall subpoenas had been served.

12/28/93 -- G. Carver's email follow up to M. Garland about serving the subpoenas (cc for G. McDowell).

January 1994

Early January 1994 -- The Fraud Section team did memos on grand jury progress, scope of investigation and impact of statutes of limitations (a memorandum on relevant statutes of limitations was forwarded to the Attorney General 1/13/94); the Fraud Section and the Public Integrity Section worked on Independent Counsel appointment materials.

1/2/94 -- George Stephanopoulos, senior presidential advisor, said on ABC's "This Week With David Brinkly," that all Clinton records relating to Whitewater had been turned over voluntarily to the Department of Justice. (The Washington Post, 1/7/94, pp A1 and A4)

1/3/94 -- Dee Dee Myers, White House press secretary, announced that the documents were being cataloged and would not be released for another two weeks. (The Washington Post, 1/7/94, pp A1 and A4)

1/4/94 -- G. Carver's email to "Irving" saying G. Carver had no objection to release, or White House review, of "Tab B" documents "Irving" had supplied at Associate Deputy Attorney General David Margolis' request.

1/5/94 -- The White house issued a statement announcing that its pending relinquishment of documents actually was in response to a Department of Justice subpoena, but it was still voluntary because the President's lawyer had requested the subpoena. (The Washington Post, 1/7/94, pp A1 and A4)

1/5/94 -- Memorandum by D. Mackay, D. Bostwick and J. Nixon on the scope of the Little Rock project and resource needs.

1/6/94 -- "Senior officials" in the White House told the press that neither they nor the Clintons were aware of the subpoena until 1/5/94. (The Washington Post, 1/7/94, p A4)

1/6/94 -- G. Carver and J. Hamilton had a telephone conversation -- J. Hamilton said he had not personally reviewed materials he received from the White House, nor were they in his office anymore -- to some extent he would have to recreate what came from the White House.

1/6/94 -- G. Carver sent Assistant Attorney General Harris copies of Kendall and Hamilton subpoenas.

1/7/94 -- J. Nixon sent G. Carver copies of subpoenas addressed to D. Kendall. (One subpoena included an instruction to the recipient not to disclose the subpoena; the other did not include the instruction. The instruction was deleted at G. Carver's direction as there was no legal authority for including it.)

1/10/94 -- Meeting attended by Assistant Attorney General Harris, M. Garland, J.C. Keeney, G. Carver, and G. McDowell -- need to move quickly, confident in team, must pin down D. Kendall's position on supplying materials, trying to get the Foster diary was discussed, other relevant subpoenas were mentioned.

1/12/94 -- Assistant Attorney General Harris asked G. Carver for an update, which he gave; G. Carver's email to G. McDowell on the position of D. Kendall on providing materials outside the scope of the subpoena and G. Carver's instruction to D. Mackay to try to get the materials -- G. Carver said an attempt to get the Foster diary would be made -- G. Carver reported that on 1/11/94, J.C. Keeney said the Attorney General wanted a memorandum on the impact of relevant statutes of limitation.

1/12/94 -- The President agreed to calls for an independent counsel. (The Washington Post, 1/15/94, p A9)

1/12/94 -- Memorandum summarizing the allegations contained in the referrals.

1/14/94 -- Five more boxes of Clinton materials relating to Whitewater were turned over to the Department of Justice. Five other boxes were turned over the previous week. (The Washington Post, 1/15/94, p A9)

1/24/94 -- The Fraud Section team, G. Carver and G. McDowell met with Robert Fiske and attorneys on his staff.

April 1994

4/1/94 -- Fax from Frank Greve of Knight Ridder, Inc. to A. Word, forwarding a copy of the 6/?/93 RTC OIG internal memorandum outlined above. (See page 4 of this chronology.)

Referral # C0004

When and where received: September 2, 1992; Eastern District of Arkansas

Amount of suspected violation: $350,000 to $1,000,000.

Date(s) of suspected criminal activity: between 12/84 and 5/85.

Amount of Loss to any victim: undetermined, but loss suspected because of the nature of the transactions.

When suspicion arose: May 1992, when an RTC investigator discovered the suspected criminal activity.

Effect on the financial institution: could have contributed to the failure.

Named suspects: James McDougal, former shareholder, officer, director and board chairman of Madison Guaranty Savings & Loan ("MGSL"); Susan McDougal, former shareholder and director; Lisa Anspaugh, former borrower.

A number of entities which once maintained checking accounts at MGSL were listed in the referral. The referral reported that some of the companies appeared to be viable and active entities while others appeared to be "little more than shell companies."

Checking account histories from September 1984 through May 1985 were reviewed. The review found "patterns" beginning as early as February 1984, possibly earlier, and occurring as late as July 1987.

The review found numerous "questionable case flow and 'loan' transactions between the combined companies and other financial institutions."

- excessive overdrafts
- check kiting
- extensive use of unauthorized signatures (possible forgery)
- potential misappropriation of funds
- possible illicit campaign contributions
- diversion of loan proceeds
- potential bank fraud

Analysis of the Accounts

The RTC reported that it examined only randomly selected checks and deposits for the target six month period because the cost of producing all the checks for the period would have been too high and labor intensive.

From an analysis of the aggregate checking accounts for those entities between December 1984 and May 1985, the RTC determined the following pertinent facts:

- Between December 1984 and May 1985, there were a minimum of 95 check transactions by and between the combined companies and/or outside financial institutions, totalling $1,019,122.

- In the same time frame, there were a minimum of 45 deposit transactions by and between the combined companies, affiliated persons, and/or financial institutions, totalling $1,019,122.

- The combined companies "lent" one another in excess of $190,000 in the relevant period. There were 31 checks written as "loans" by and between the entities, totalling $192,886, but the RTC found no evidence of any repayment.

...

- The jointly held personal checking account of James and Susan McDougal (account #424) often was overdrawn, with overdraft amounts of up to $30,000, lasting two and three weeks at a time. In the relevant period, checks drawn on the McDougal account exceeded $622,000 and deposits into the account exceeded $690,000. The combined companies wrote at least 10 checks (called "loans") to James or Susan McDougal, totalling $53,170.

- James McDougal used some of the proceeds of a home purchase and improvement loan to bring current principal and interest payments on other MGSL loans.

- James McDougal allowed overdrafts to exist at the "shell companies" as well. In the relevant period, there were 16 overdraft situations within the accounts of the combined companies. Most of those were cured by deposits from one company to another.

- In the relevant period, Whitewater Development wrote at least 10 checks, totalling $70,639.41. Five of the checks, totalling $60,625, were written on insufficient funds. The overdrafts were covered by funds from the other combined companies and included loan proceeds from bank loans. No service charges or fees were

assessed, except in two instances, but those charges/fees were refunded.

- The MGSL **Board of Directors minutes show** that in October 1985, Madison Financial Corporation was overdrawn by $2.7 million. The Board of Directors later voted to call the overdraft "an investment in the service corporation," as relevant regulations permitted up to 6% of MGSL's assets to be invested in service corporations.

- Every month in the relevant period, Susan McDougal deposited a check for $285.13 from Logan Charter Service into the Whitewater account at MGSL. The checks were payable to Bank of Kingston, but were endorsed by Susan McDougal to Whitewater's MGSL account. She was the only signatory on the Whitewater account, but the signature on the signature card evidently was not hers.

- In the relevant period, Lisa Anspaugh signed the signatures of the McDougals to numerous checks drawn on the combined companies.

- McDougal had a personal financial interest in allowing Whitewater Development frequent overdrafts.

- The MGSL account of Tucker-Smith-McDougal involved similar activity in the relevant period.

- The MGSL account of Flowerwood Farms involved similar activity in the relevant period.

- As of May 24, 1985, the MGSL joint checking account of the McDougals had an overdraft balance of $4,096.03.

- As of April 30, 1985, the MGSL account of Whitewater Development had a balance of $255.13.

- As of April 9, 1985, the MGSL account of Tucker-Smith-McDougal had a balance of $5,664.73.

- As of May 16, 1985, the MGSL account of Flowerwood Farms, Inc. evidently was not overdrawn

The RTC cited a Flowerwood Farms, Inc. check payment of $86,612.68 on a MGSL loan to McDougal, and a subsequent check payment by McDougal of $55,000 to Flowerwood Farms, Inc. as "a blatant example of the check kiting alleged in the summary of the referral." The Flowerwood Farms, Inc. payment overdrew its MGSL account by $50,994.18. McDougal's payment covered the overdraft, but overdrew his MGSL account by $28,077.82.

The RTC reported that the combined company accounts of Whitewater Development, Tucker-Smith-McDougal, and Flowerwood Farms, Inc., in conjunction with the account of the McDougals, were "the most active and egregious contributors to the alleged overdraft and check kiting activities."

Charles Banks' 10/16/92 Letter

He wrote the Special Agent in-Charge ("SAC") of the FBI's Little Rock Division, and referred to an earlier meeting between them, at which he expressed his serious reservations about future prosecutions of the individuals involved in RTC criminal referral # C0004, stated that he had completed a second review of the referral and its supporting documents, and supplied his current views on RTC criminal referral # C0004:

- There was no prosecutable case against any of the witnesses. Proof of the requisite criminal intent could not be done.

- The allegations against the McDougals and Lisa Anspaugh had "credibility worthy of possible deliberation for investigation," but there were several "serious negative attributes for a successful prosecution," as follows:

  James McDougal's previous acquittal;

  James McDougal's mental state; and

  no prospect of recovering any lost monies.

...

He expressed concern that the RTC referral might have been politically motivated, or, if not, might have an effect on the election if an investigation were launched, and told the SAC that the U.S. Attorney's Office would not become involved in any investigation prior to the election.

He told the SAC, however, that following the election, he would be available to meet with the SAC "to discuss a limited examination and possibility of proving some of the allegations regarding Mr. and Mrs. McDougal and Ms. Anspaugh."

He went on to say that there was a "distinct possibility" that he would decline the case, and in that case, the DOJ could override his decision and take over the investigation and prosecution if it wished.

He concluded with advice to the SAC that the U.S. Attorney's Office was going to refer any press inquiries to "supervisory officials in the Department of Justice and/or Resolution Trust Corporation."

Charles Banks' 1/27/93 Letter to EOUSA

U.S. Attorney Charles Banks wrote to Donna Henneman, Office of Legal Counsel, Executive Office for U.S. Attorneys ("EOUSA") January 27, 1993, regarding RTC criminal referral # C0004, as follow up to his October 16, 1992, letter to the FBI.

He reported that RTC officials had contacted his office following the RTC's receipt of a FOIA request from a member of the Little Rock media.

He told the EOUSA that the RTC wanted to know whether their production of referral documents to the media, if that were to occur, would affect the U.S. Attorney's Office's investigation.

He made clear to the EOUSA that his office did not have any investigation underway and had so informed the RTC.

He told the EOUSA that his office had suggested to the RTC that it follow the appropriate FOIA law in responding to the request.

He referred to his October 16, 1992, letter to the FBI as a "self-explanatory" statement of his office's position on RTC criminal referral..# C0004.

He said that "it seems prudent that a limited preliminary investigation of allegations pertinent to Mr. and Mrs. McDougal and Ms. Ansbaugh should be considered," and FBI interviews of the three should suffice to determine whether more investigation should be done.

He reported that he believed his office had a conflict of interest precluding it from handling the referral because "a second investigation/prosecution could easily give the appearance of inappropriate motivation by this office."

He said that he "would appreciate and expect that any decision of investigation, indictment, prosecution or declination be the responsibility of the Department of Justice."

He advised that he had resigned his position as U.S. Attorney effective March 1, 1993.

Doug Frazier's February 18, 1993, Memorandum

On February 18, 1993, Associate Deputy Attorney General Douglas Frazier sent his memorandum to Acting Assistant Attorney General John C. Keeney, Criminal Division, forwarding a "recusal package" for "review and recommendation."

The package consisted of a cover memorandum from Anthony Moscato, Director of the Executive Office for U.S. Attorneys ("EOUSA"), through Frazier, to Acting Attorney General Stuart Gerson, dated February 9, 1993, and the following attachments:

Charles Banks' letter dated January 27, 1993;

Charles Banks' letter dated October 16, 1992;

Urgent Report dated October 7, 1992, prepared by the EOUSA;

Urgent Report dated October 20, 1992, prepared by the EOUSA; and

RTC Referral # C0004.

The Moscato memorandum mistakenly reported that the October 16, 1992, letter to the FBI was addressed to the RTC.

The Moscato memorandum reported that Charles Banks had resigned as U.S. Attorney effective March 1, 1993.

The Moscato memorandum did not include any recommendation on what decision should be made on the recusal request; the second page of the memorandum presented the following alternatives for the Acting Attorney General's consideration:

Matter Should Remain in USAO: _____;

Matter and Files Should be Referred to: _____; or

Other: _____.

Mark MacDougall's 2/23/93 Memorandum

According to the memorandum:

- Chief of the Fraud Section Gerald McDowell had asked him to review the referral and make a preliminary recommendation regarding further investigation and prosecution.

- He reviewed the following documents: (1) RTC criminal referral # C0004 and the transmittal letter of September 1, 1992, addressed to the U.S. Attorney for the Eastern District of Arkansas ("EDAR"); (2) letter dated October 16, 1992, from Charles A. Banks, U.S. Attorney for the EDAR, to Don Pettus, Special Agent in Charge, Little Rock Division of the FBI; (3) and letter dated January 27, 1993, from U.S. Attorney Banks to Donna Henneman, Office of Legal Counsel, Executive Office for U.S. Attorneys. None of the transactional documents described in the referral were provided or reviewed.

- The first four pages of the Mark MacDougall memorandum summarize the scope of the review and the allegations contained in the referral.

- Mark MacDougall's analysis of the information contained in the referral appears on the fourth and fifth pages of his memorandum. He concluded that the factual allegations were insufficient to establish an offense under any or all of the following statutes: 18 U.S.C. §§ 215, 656, 657, 1005, 1006, 1014, 1344 or 1956.

- He noted that for the most part the conduct of concern consisted of writing bad checks on MGSL accounts. He correctly stated that "bad check" cases are not often prosecuted Federally.

- He further stated:

  evidence of the intent required to prove a bank fraud offense was inadequate;

  the referral did not report any loss to any victim;

  the referral did not report any false representations to any financial institution or any Federal regulatory agency;

  waiver of overdraft fees is not uncommon in the banking industry; and

James McDougal was tried and acquitted on earlier Federal charges based on activities of his at MGSL.

Based on the foregoing conclusions, and "current Fraud Section standards for prosecution," Mark MacDougall recommended that the conduct of James and Susan McDougal and Lisa Anspaugh did not warrant the initiation of a criminal investigation.

Mark MacDougall concluded that there were no facts set forth in the referral supporting designating the President and Mrs. Clinton or Governor Jim Guy Tucker as material witnesses to the allegations made in the referral.

Memorandum to Frazier 3/19/93

On March 19, 1993, Acting Deputy Assistant Attorney General Laurence Urgenson, signed out a memorandum addressed from Acting Assistant Attorney General John Keeney to Associate Deputy Attorney General Douglas Frazier.

On March 2, 1993, a copy of the memorandum was initialed by both Allen Carver and Gerald McDowell, and the copy was marked "Typed 3/2/93."

The memorandum reported to Douglas Frazier that the Criminal Division had reviewed the recusal package and had "concluded that there was no identifiable basis for recusal by the United States Attorney."

The memorandum further reported that the Division "would not question a decision by the United States Attorney to decline further substantive action on the referral."

Lastly, the memorandum forwarded a copy of Mark MacDougall's memorandum for Douglas Frazier's use and his determination of whether or not to send the MacDougall memorandum to the U.S. Attorney's Office in Little Rock.

THE WALL STREET JOURNAL

8-8-95

Coverup

From the opening remarks of Resolution Trust Corp. investigator Jean Lewis, scheduled to testify today before the House Banking Committee's investigation into the failure of Madison Guaranty Savings & Loan Association:

I believe there was a concerted effort to obstruct, hamper and manipulate the results of our investigation of Madison—and the subsequent independent counsel investigation—by individuals at the RTC, the Treasury Department, the Justice Department and U.S. Attorney Paula Casey's office in Little Rock, Ark. . . .

The first Madison criminal referral, which was assigned the number C0004, was supported by substantial detail and extensive exhibits. It was completed on Aug. 31, 1992, and submitted to the FBI and U.S. attorney by Kansas City RTC senior management in the investigation unit on Sept. 2, 1992, in full compliance with RTC procedures and guidelines.

Among other things, the referral provided specific check numbers, dates, account names, account balances, particular uses of funds, and the names of individuals and entities involved in various check kiting schemes. The referral also stated that among those who stood to benefit from this activity were Stephen Smith, Jim Guy Tucker, then-Gov. Bill Clinton and Mrs. Clinton. . . .

A Long Delay

Previously submitted referrals involving Arkansas institutions had consistently resulted in letters of acknowledgement from the FBI. By late December 1992, the investigation unit had not received an acknowledgement on the Madison referral. In order to follow up, I contacted the Little Rock FBI. Shortly thereafter, the investigation unit received a brief letter from the FBI acknowledging receipt of the referral and directing further inquiries to the U.S. attorney's office in Little Rock. . . .

The referral was finally located in the Fraud Section of the Justice Department's Criminal Division in late June 1993, and was returned to the Executive Office for U.S. Attorneys for review.

On June 23, 1993, I learned the referral would be returned to the U.S. attorney in Little Rock. This was based on an internal Justice Department memorandum stating that there was no basis for recusal of the U.S. attorney and no apparent conflict of interest. Nine days later I learned the referral had arrived back in Little Rock, but that the acting U.S. attorney intended to "let it sit" until the new U.S. attorney-designee, Paula Casey, took office. . . . On Oct. 27, 1993, more than a year after its submission, Ms. Casey declined RTC Criminal Referral No. C0004. In other words, Ms. Casey refused to further investigate the matters raised in the referral.

In rejecting the referral, Ms. Casey stated there was "insufficient information to sustain many of the allegations." Ms. Casey stated she was concurring with the opinion of Justice Department attorneys in Washington who had concluded this matter prior to her coming to the U.S. attorney's office in Little Rock.

However, Ms. Casey's rejection was in direct conflict with information I had received from the Justice Department in Washington, and the U.S. attorney's office, when the referral was returned to Little Rock four months earlier. Furthermore, the committee should be aware of press reports regarding a series of telephone calls from former Associate Attorney General Webster Hubbell to Paula Casey, which overlapped with the latter part of this same time period.

Between May 1993 and August 1993, the Madison criminal investigative team reviewed and researched several transactions involving insider abuse, self-dealing, money laundering, embezzlement, diversion of loan proceeds, payments of excessive commissions, misappropriation of funds, land flips, inflated appraisals, falsification of loan records and board minutes, chronic overdraft status of various subsidiaries, joint ventures and real estate investments, regulatory violations of investments in subsidiaries, wire fraud, and illegal campaign contributions.

As a result of this investigation, nine additional referrals were prepared alleg-

I believe there was a concerted effort to obstruct, hamper and manipulate the results of our investigation of Madison Guaranty Savings & Loan.

ing criminal violations of several sections of the United State code. . . . These nine referrals identified multiple suspects, including the Bill Clinton Political Committee Fund, James and Susan McDougal, Jim Guy Tucker, Chris Wade, and several former Madison officers and borrowers. Suspects on some of the referrals overlapped as witnesses on others, reflecting the elaborate nature of Madison's relationships with some of its borrowers. . . . The referrals also identified additional witnesses with potential knowledge of the alleged criminal violations. Those witnesses included Mr. and Mrs. Clinton. . . .

The Kansas City RTC's criminal investigation unit had planned to submit the nine additional criminal referrals on Oct. 1, 1993. However, RTC Professional Liability Section Chief Julie Yanda obstructed that effort with her unprecedented demand that her staff first conduct a "legal review" of the referrals. Going back to July 1993, shortly after Ms. Yanda was briefed on the criminal referrals, the criminal investigation unit observed the beginning of a concerted effort by the Professional Liability Section (PLS) to monitor the Madison investigation and exert control over certain aspects of it. . . .

On Sept. 30, 1993, the day before the planned submission of the additional criminal referrals, Ms. Yanda imposed her demand for an unprecedented legal review. Four days earlier she had received copies of the referrals, as did a limited number of senior management staff in Washington and Kansas City. Also on Sept. 30, 1993, Ms. Yanda assured Acting RTC General Counsel Glion Curtis that the "proposed referrals" would not be submitted to the U.S. attorney's office and the FBI until her staff in PLS reviewed them.

At the time, Mr. Curtis had an open line of communication to former Treasury Department General Counsel Jean Hanson, who in turn reported to Deputy Treasury Secretary Roger Altman. We now know that Ms. Hanson provided the White House with a "heads up" on the RTC's criminal referrals the day before, on Sept. 29, 1993. . . . The request for a legal review of the criminal referrals manipulated standard procedures and provided the Treasury Department the opportunity to review and selectively disseminate sensitive criminal referral information. Such sensitive information was in fact disclosed by Ms. Hanson in her Sept. 29, 1993 visit to the White House. . . .

On October 8, 1993, the completed legal review appeared by means of the RTC e-mail. The e-mail recipient list is noteworthy as it included additional people to whom the Kansas City RTC criminal investigation unit had not provided copies of the referrals. . . . The inclusion of these senior Washington and Kansas City managers raises the question: Why, and at precisely what point, did the legal review of the Madison criminal referrals become an issue of such far-reaching concern in the RTC legal division? Subsequent testimony revealed the legal review reached as far as the office of Treasury General Counsel Hanson.

Without Prior Notice

The Madison investigation team immediately examined the legal review and found that it consistently focused on civil issues rather than the criminal allegations raised in the referrals. And even the criminal issues raised by PLS were precisely the kind of issues that the U.S. Attorney's Office and the FBI have subpoena power to investigate, and should investigate, in pursuing a criminal referral. . . .

The following week, the week of Oct. 11, 1993, PLS further interposed itself into the criminal investigation process by assuming control of all Madison subpoena compliance matters, which, until that time, was the primary responsibility of the Kansas City RTC criminal investigation unit. This was done without any prior notice. . . .

On Nov. 9, 1993, I was removed from the Madison investigation without warning or explanation at the direction of PLS Section Chief Julie Yanda. Ironically, two weeks later I received a Special Achievement Award for my role in the Madison investigation.

DEPOSITION OF LAURENCE S. McWHORTER IN RE: S. RES. 120

TUESDAY, OCTOBER 17, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of LAURENCE S. McWHORTER, called for examination pursuant to notice of deposition, at 9:32 a.m. in Room 640 of the Hart Senate Office Building, before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

ALICE S. FISHER, ESQ.
Majority Deputy Special Counsel
LANCE COLE, ESQ.
Minority Deputy Special Counsel
RICHARD BEN-VENISTE, ESQ.
Minority Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CHARLES J. SGRO, ESQ.
Counsel to Deputy Attorney General
U.S. Department of Justice
10th Street and Constitution Avenue, NW
Washington, DC 20530
On behalf of the deponent.

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PROCEEDINGS

MS. FISHER: Good morning, Mr. McWhorter. My name is Alice Fisher, Associate Special Counsel to the Special Committee. To my left is Lance Cole, and he is Deputy Special Counsel.

This deposition is being conducted pursuant to Senate Resolution 120. I don't know if you've had a chance to look at it, or your counsel has.

MR. MC WHORTER: I am not. Just go right ahead. I don't need to read it.

MS. FISHER: The resolution establishes a Special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority and other related matters.

Section 1(b)2(c) of Senate Resolution 120 authorizes an investigation and public hearings into whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings and Loan Association or Whitewater

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Development Corporation, and this will be the focus of today's deposition.

This deposition is in advance of public hearings most likely to occur in November. It's unclear whether you will be called or not called to testify before those hearings, but you certainly will be given advance notice.

I'm going to ask a series of questions. I'll ask you to testify under oath. If you don't understand a question, please let me know and I'll rephrase it.

The stenographer will prepare a record and the deposition will be treated as committee confidential until the commencement of the hearings. Prior to the hearings you will receive a letter from the committee telling you that you may come to the Senate to review the transcript of your deposition and make any notes of corrections for transcription on an errata sheet.

You may be represented by counsel and I see that you are. Objections to the form of the questions will be noted for the record and counsel

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may object on the grounds of privilege or relevance. The committee chairman will rule on objections where the witness refuses to answer a question.

Whereupon,

LAURENCE S. MC WHORTER

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. FISHER:

Q Could you state your name for the record.

A Laurence S. McWhorter, L-a-u-r-e-n-c-e, S, M-c-W-h-o-r-t-e-r.

Q Present business address?

A 6305 Ivy Lane, Suite 600, Greenbelt, Maryland 20770, Office of the U.S. Trustee.

Q Could you give a brief description of your employment history?

A I started in the Department of Justice in 1968 as a summer law clerk, came back in 1969 as a trial attorney in the criminal division under the

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Attorney General's honors program. I've worked in the department all my life. I joined the Executive Office for U.S. Attorneys in 1974 and worked as a regional evaluator in the southeast region. I eventually became the legal counsel in that office and deputy director and director of the Executive Office for U.S. Attorneys.

I don't remember all those dates.

Q That's fine. Are you aware of the committee's document request to the Department of Justice?

A Generally.

Q Did you search for any responsive documents, notes, reports that you might have?

A Yes.

Q Do you have any knowledge of any responsive documents not being produced?

A No.

Q Did you speak to anyone other than your counsel prior to your deposition?

A Ever or --

Q About the deposition.

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A No. My wife knows I'm here.
Q Okay. I hope so.
A She doesn't know what I'm going to say.
Q Could you tell me when you first heard of an RTC criminal referral relating to Madison Guaranty or Whitewater?
A I'm not sure. It would have been in the summer of 1992, I believe.
Q Do you recall what it was that you heard about it at that time?
A No.
Q Do you recall who told you about it?
A I believe I had a conversation with Chuck Banks, the U.S. Attorney for the Eastern District of Arkansas, about a referral he was expecting to receive, and I guess it was from the RTC, about the Madison Bank that mentioned the then-Governor and Mrs. Clinton as investors involved with the bank.
Q Do you recall anything else about that discussion?
A No.
Q But it's your recollection that he called

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you sometime in -- prior to receiving --
A It might have been a personal -- I might have seen him, but I have a recollection of talking to him about expecting to receive a referral, and this was shortly before the election. And what to do with it was at issue.
The department had a rule, an urgent report requirement set forth in the U.S. Attorneys manual, and under that manual it was my opinion that this information had to be referred to the department as an urgent report.
Q Did you direct him to take any action at that point?
A No, I was -- in relation to the investigation?
Q Yes.
A No.
Q And --
A It was not my job to do that.
Q Well, did Mr. Banks contact you when the referral was received in the Eastern District of Arkansas U.S. Attorney's office?

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A We eventually got an urgent report from that office, and I believe it was signed by the first assistant, so Mr. Banks may not have been in the office on the day that they sent it, so I don't know. I don't recall having a conversation with him after receiving it.
Q Would that have been Mr. Dodson?
A I think so, yes.
Q Did you have a conversation with Mr. Dodson at that time?
A I don't believe I did, but my deputy may have, but I don't think -- Wayne Rich was his name.
Q Did Mr. Rich tell you about any conversations that he had?
A I'm sure he told me to expect an urgent report, but that's the gist of it.
Q Do you recall receiving this urgent report?
A Yes.
Q And what do you recall doing at that point?
A It came in -- the process would be that the Office of Legal Counsel in the executive office would prepare the memorandum to send it upstairs and

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actually make copies as required and physically deliver it.
Q Do you recall reading the urgent report that was coming out of the Eastern District of Arkansas?
A I skimmed it. I did not read it carefully.
Q Did you read the referral that was attached to it?
A No.
Q Or I should ask, was the referral attached to it?
A I don't recall seeing the referral. I was interested in getting it out of my office very quickly and not --
Q Why was that?
A And not reading about it in the newspapers the next day, which was my greatest concern. I thought the information was so close to the election that the Attorney General should be aware of it.
Q I'm going to show you a document that's been Bates stamped 17458. Do you recall sending this report?

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A They appear to be my initials on this copy, and I do recall sending a report about this date and so this is probably it.
Q Do you recall having any discussions with recipients of this report, Mr. Verinder, Mr. Barr, Mr. Terwilliger or Mr. Budd?
A I did not have any conversations with them.
Q Did you have any conversations with anyone else within the Department of Justice regarding this urgent report?
A I think Ira Raphaelson asked me if I knew this was coming beforehand.
Q Mr. Raphaelson would have called you prior to your receipt of the urgent report from the Eastern District of Arkansas?
A It was after this went upstairs because he was -- I normally made sure that he got a copy of any report involving savings and loan fraud since he was the savings and loan czar at the time, and he was -- it was a new job in the department and they didn't always give him copies of urgent reports that I thought he should see.

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Q Do you recall that you sent him a copy at this time?
A I believe I asked specifically that he get a copy.
Q Was there anyone else within the Department of Justice or within your office specifically that you discussed this memo with?
A Well, the people involved in transmitting it, and there wasn't any -- much discussion. The only conversation I remember about it was with Theresa Bertucci, who was my executive assistant, and we were basically just hoping it didn't show up in the media from this source.
Q Any other substantive conversations --
A No.
Q -- within or outside of the Department of Justice?
A I don't remember any, no.
Q On the second page of the memo, it lists follow-up Mack Dodson, first Assistant U.S. Attorney. Do you recall why his name was placed here rather than Mr. Banks's?

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A I don't know for sure. I have the impression that Chuck Banks was not in the office when this came in and that Mack Dodson was the acting U.S. Attorney at the time and had knowledge of it. The normal forum used, that we recommended for urgent reports, had a space for clarification and follow-up.

Q And could you just describe for me -- and I know it's stated in the memo -- but why it was that you felt this report needed to be sent, this urgent report that you sent?

A The U.S. Attorneys manual had a requirement for urgent reports to be sent involving sensitive matters or matters that were likely to appear on the evening news, matters involving constitutional lawsuits against the United States and basically anything the Attorney General might be unhappy not knowing about beforehand. That's why it was started. It's been a requirement in the department in one form or another for all of my experience there. Attorneys General hate to read about things or be asked questions that they think they should have heard about.

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Q Is it your recollection or do you have a recollection of anybody other than Mr. Raphaelson calling you after they received this memo?

A No.

Q Turning to the second page under "Synopsis," I guess it's the second sentence, could you just read that sentence. I think it starts about the fifth line down, actually.

A "It is the belief of the U.S. Attorneys office that further investigation into this matter is warranted."

Q Do you recall what knowledge that sentence was based on or what conversation?

A I believe that Mr. Banks believed that the information provided by the RTC was preliminary and not thorough and needed more investigation before a criminal matter could be considered by the U.S. Attorney.

Q But is it your recollection that the U.S. Attorney Banks believed that the matter should be investigated?

A It depends on what the matter is. If it

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was whether or not there was savings and loan fraud involving Mr. McDougal and possibly others, I think obviously that needed to be investigated further.

Now, whether or not -- I don't think he thought there was sufficient allegations of criminal misconduct by the Governor and Mrs. Clinton to warrant significant further follow-up.

Q And do you believe that he expressed that to you in a telephone conversation or a letter or do you recall how you got that information?

A I don't recall exactly. I think it was in my telephone conversation with him prior to the receipt of this (indicating) or my conversation, it could have been at a conference.

Q Do you recall having more than one conversation with Mr. Banks during this time period?

A No. And I have a fuzzy recollection of any conversation, but that's what I think, so I think I had just a conversation with him.

Q Do you recall having any conversations with any employees of the Federal Bureau of Investigation at this point --

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A No.

Q -- during this time period about this matter?

A No, never about this. It was not our job to be concerned with the substance of this matter. Our job was transmitting the urgent report.

Q Mr. McWhorter, I would like to show you a document Bates numbered 7214, which appears to be dated October 8, 1992. Appears to be an E-mail from you.

(Mr. Ben-Veniste joined the deposition.)

A It looks like an E-mail from me.

Q Would this be an E-mail to Mr. Raphaelson? Is that what the "Ira" is there?

A Yes, yes, it would be to Ira.

Q Could you tell me what you recall about -- does this refresh your recollection?

A I think he had called me and I got a message that did we know about it beforehand, and I believe that I tried to call him back and was unable to and sent him the E-mail which I knew he occasionally used.

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Q Does this refresh your recollection that Mr. Dodson thought that some further investigation was needed, that you had -- someone had a telephone conversation with Mr. Dodson about this?

A I guess Mr. Rich would have told me that, but I believe I knew about this matter before we got the urgent report.

Q Do you recall whether you knew that the U.S. Attorney's office in the Eastern District of Arkansas felt that further investigation was needed prior to receiving the report?

A I don't know anything different than I told you before. I mean, I think that Chuck Banks considered this to be a very raw and preliminary referral that was probably prematurely sent and it needed further investigation by the FBI in order to assess whether or not it was a serious matter that should be followed up on.

Q Do you recall receiving any FBI teletypes regarding this criminal referral?

A No, I don't think so. It would not be usual for me to receive those, unless they were sent

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by the U.S. Attorney as part of the urgent report.

Q I would like to show you a document with Bates number 7157, and it appears to be on the first page a note. Would that be your signature at the bottom?

A No, this is not, no. It's not mine.

Q Would you know whose --

A My guess is that it would be Bob Mueller's, but that's -- and it appears to be addressed to John Keeney. I don't know for sure. I mean Bob could tell you if that's his handwriting.

Q Do you recall having any discussions with Mr. Mueller?

A I don't think I did.

Q Do you recall having any discussions with Mr. Keeney regarding the criminal referral?

A I'm sure I didn't.

Q Mr. McWhorter, I would like to show you a document Bates number 17457. It appears to be a similar urgent report but this one is dated October 20, 1992.

A Yes.

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Q Do you recall sending this report?
A I don't recall sending it, but the handwritten looks like, "away," in the bottom left corner looks like my writing. It probably says something like "deliver to Ira right away," or "deliver right away," something like that.
Q Do you recall what caused you to send this additional report?
A I guess we got the letter from Don Pettus, or to Don Pettus.
Q Do you recall having any discussions about the letter from Chuck Banks to Don Pettus?
A I don't recall any conversations, no.
Q Do you recall whether you read the letter that Mr. Banks wrote to Mr. Pettus?
A I don't know. I don't recall reading it, no. I must have skimmed it.
Q I would just like to show it to you briefly, it's Bates 7051 and 7052, and ask you if that refreshes your recollection.
(Witness reviewed the document.)
A I don't recall reading this before.

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Q Do you recall having any conversations regarding this October 20, 1992 memo which you sent to Mr. Barr, Mr. Terwilliger and Mr. Budd?
A No.
Q Did you have a conversation with Mr. Raphaelson?
A I don't recall any.
Q Do you recall any further substantive conversations regarding criminal referral, the RTC criminal referral?
A No, I wouldn't have had any substantive conversations about it.
Q I just want to show you one last document. I thought I had a copy here. It's Bates number 00502, dated 10-19-92. I would just ask if that signature is your handwriting or is that --
A No, that's not my handwriting.
Q Do you know who that might be referring to, the person that signed that note?
A No, it's from the Office of the Assistant Director in FBI, CID. Could be Larry Potts. He was involved in savings and loan matters.

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Q Do you recall having any conversations with him?
A No. I recall not having any conversations with him.
Q Did you or anyone in your office have any conversations with anyone at the RTC regarding the criminal referral?
A I did not, and I would be really surprised if anyone in my office did.
Q After this October 20, 1992 memo, did you have any other contact with the criminal referral or any --
A No.
MS. FISHER: I don't have any further questions. Thank you.
THE WITNESS: Thank you.
EXAMINATION
BY MR. COLE:
Q Mr. McWhorter, would you like to take a break or prefer to continue, try to finish. I don't think I'll be a very long time, but this would be a good time for a break.

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A Whatever you like. I'll be glad to do whatever you like.
Q Why don't we go forward and then if you would like to take a break, just let us know.
A That's fine.
Q If I could direct your attention back to your earlier testimony regarding your initial contact with Mr. Banks concerning the criminal referral, do you recall when that occurred?
A Not precisely. I think it was sometime in the summer of 1992, probably the late summer.
Q And it's unclear to me whether you believe that was in the form of a telephone conversation or a face-to-face discussion; is that correct?
A That's correct. I'm not -- my normal practice was to make telephone notes if I had the conversation at my desk, and I have not found any telephone notes of this time period, so I was either not at my desk when I had the conversation, and it was on the telephone or I saw Mr. Banks in person, is what I make of that.
Q Was there any event or conference regularly

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scheduled that you attended that you might have seen Mr. Banks at that would help us?

A I just don't -- I don't remember. There may have been one. I just don't know.

Q Did you speak with Mr. Banks on a routine basis at that time?

A Yes, fairly often, several times a month, usually. We would go for times without speaking, but I had frequent discussions with him about one thing or another.

Q And do you keep any personal calendars or Day-timers that you could review to try to pinpoint the time that you spoke with Mr. Banks?

A I have looked through the only telephone log that I have, it's a steno pad, for the two months immediately preceding this, but that's the only one that I found from this time period, and there's no conversations with Mr. Banks that I recall, and I'm sure there was no notes of any conversations about this subject.

Q Is there a schedule that would have shown a conference that you might have attended that might

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refresh your recollection?

A I would have travel papers somewhere that I could look through to see if there was a U.S. Attorneys conference. The U.S. Attorneys, I believe, were invited to the White House on several occasions before the election, so it could have been at one of those meetings that I wouldn't have any travel. He came to town occasionally, as all U.S. Attorneys do.

Q I think it would be helpful to the committee, and perhaps I should address this request to Mr. Sgro, if you could review your calendars and schedules and also any time records that you kept that the department might have required you to keep to determine if there's any indication of when you met with Mr. Banks, if we could request that.

A Okay. I'll look through what I can find.

Q Or when you spoke with him, I should say. And was it your testimony earlier that Mr. Banks, at the time you had this initial conversation with him, told you that he was expecting a referral from the Resolution Trust Corporation?

A Yes. I don't believe he had a writing at

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the time we spoke.
Q And did he tell you how he had come to know that the referral was expected?
A He probably was told by somebody in RTC that it was coming, but I don't -- that's a guess on my part. I don't remember exactly why he was expecting it.
Q And I'm also unclear as to the purpose of this conversation. Was he seeking guidance from you as to what action he should take with respect to the referral?
A I think so. I think the conversation was what do I have to do with this? Do I have to send it in an urgent report?
Q So he was aware of the urgent report procedure?
A I believe he was.
Q And you advised -- did you advise him that the referral should be the subject of an urgent report memorandum?
A I don't recall specifically, but it would be my practice to tell him that it should be referred

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as an urgent report. It would be normal for me to do that.
Q And I believe you testified to this earlier, but if you could once again explain the reasons that an urgent report would be appropriate for this referral.
A Well, it involves the governor and the first lady of a state. It's about savings and loan fraud, which was a major issue in the department in this time frame. Allegations of -- or at least involvement in a matter that was being referred is a criminal matter.
MR. SGRO: Was your question more general than that as to why -- never mind.
BY MR. COLE:
Q Perhaps I could ask a follow-up question that would clarify. In your experience, were other RTC criminal referrals the subject of urgent report memoranda to the Attorney General?
A I believe so. Other matters involving savings and loan fraud were subjects of urgent reports. They were most frequently conviction or

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sentencing information, if there was a major conviction in a savings and loan case or a significant sentence was imposed.

Whether or not referrals were -- I don't recall any others involving significant public figures, so I don't think there were any -- I just don't recall any others that were similar.

Q Did Mr. Banks inform you that his understanding was that this referral would mention Governor and Mrs. Clinton in your initial discussion with him?

A I believe so.

Q And so is it your testimony that the reason that an urgent report memorandum was appropriate for this referral was because it mentioned Governor and Mrs. Clinton?

A Yes.

Q So but for that, it would not have been the subject of an urgent report memorandum?

A I don't think so, although the McDougal case, I believe, was a significant savings and loan case at the time.

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Q You also testified that it was your understanding that Mr. Banks viewed the referral as very preliminary and perhaps not thorough, I believe were your words. Can you tell me what the basis was for your understanding?

A It would have been in the telephone -- or the conversation. I don't remember specifically. That's my impression.

Q Did he tell you what he intended to do with the referral as a substantive matter in terms of review, further action?

A I don't think so. It would not normally be anything he would talk to me about.

Q Do you have any recollection as to how long prior to your October 7 memorandum this conversation with Mr. Banks occurred?

A No, not specifically.

Q If I could show you a document numbered 17458 dated October 7, 1992, and direct your attention to the cc indication in the middle of the page.

A Okay.

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Q Do I read that correctly to be an indication that Mr. Raphaelson was copied on the urgent report memorandum?
A It indicates that, yes, and I'm certain that I would have intended that he be a recipient and probably noted that on a document or to the person that took it upstairs.
Q And you testified that you had a subsequent discussion with Mr. Raphaelson about the referral?
A I'm not sure we actually talked. The E-mail message that I was shown earlier, I believe, was a -- was because I missed talking to him on the telephone. I think he called me, left a message, did I know this was coming or something to that effect, and I would have called him back, and if he was out, I would -- I believe that I then sent the E-mail message so that I could convey the information.
Q And do you recall exactly what the message was that you received from Mr. Raphaelson?
A It was generally was I aware or were we aware that it was coming, was the urgent report out of the blue or was it something of which we were

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aware.
Q If I could show you a document that was produced to the committee by the Federal Bureau of Investigation that's numbered 1062, if you would look at the third handwritten entry on that document, September 22, 1992.
(Witness reviewed the document.)
And if I read that correctly, it says "Ira hearings rumbling on case"?
A Well, that may be what it says. I'm not sure. It could be that. It looks like "Ira hears rumbling on case."
Q Does that refresh your recollection as to whether Mr. Raphaelson may have known about the referral prior to your October 7 memorandum?
A No, no, I -- I just don't know if this is about this matter. I don't have any knowledge of this.
Q Thank you. If I could show you another document that actually does -- it has a number, 007128A, and it appears to be a copy of a cover sheet with a Post-it note attached to it. I believe it

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reads "Madison Guaranty S&L, urgent report finally."
Do you recognize that handwriting?
A No. I don't believe it's my handwriting.
Q Do you have any sense, other than what you've testified previously with regard to your discussion with Mr. Banks, that the Department of Justice was aware of this referral prior to your distribution of the urgent report memorandum on October 7?
A I don't have any sense that anybody was aware prior to that time. I don't know.
Q And if I understand your prior testimony, you didn't discuss the matter with anyone except the persons in your office who helped you prepare the urgent report memorandum and transfer it upstairs, I believe you said, to the Attorney General's office?
A It would have gone to the Executive Secretariat to distribute to the Attorney General's office, but that's correct.
Q And your discussion with Mr. Raphaelson you believe occurred after the distribution of that memorandum?

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A I believe so, yes, or actually I don't believe I had a discussion with him.
Q Yes.
A I believe he called me -- I think Madison Guaranty was -- I think there was knowledge in the department that there was some problem at the Madison Guaranty Bank prior to this time, but I don't know specifically.
Q And if I could show you again the E-mail message from October 8 that Ms. Fisher previously showed you from yourself to Mr. Raphaelson, and I believe in the first line it refers to "my folks," and I don't have it in front of me, so I can't recall the rest of the sentence. It says "Mack Dodson, First USA, I think, called my folks on the 6th to say that he had been sitting on the referral for six weeks and wondered if he should let us know something."
First, do you recall who your folks were that you referred to there who received a call from Mr. Dodson?
A It could have been -- I don't recall

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specifically. It could have been Wayne Rich, who was the principal deputy, or it could have been someone in the executive office's legal counsel or it could have been both.

Q And do you have any recollection of whether that call on the 6th would have been before or after your discussions with Mr. Banks, which presumably were before the 7th, but you can't recall the date?

A I believe that I talked to Chuck Banks before this, before this -- before the 6th of October.

Q Do you have any knowledge as to whether this contact from Mr. Dodson was related to your discussion with Mr. Banks?

A I don't know. I just don't know.

Q And what did you mean when you said that Mr. Dodson said that he had been sitting on the referral for six weeks?

A I guess I meant that he said that he had had it, had a written referral, and was not doing anything with it.

Q And so your E-mail, then, would indicate

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that he called your office to ask for guidance as to what he should do with the referral? I believe the words are "wondered if he should let us know something."

A Yes.

Q So if I'm understanding your testimony correctly, then, both Mr. Banks and Mr. Dodson perhaps independently contacted your office for instruction as to how to handle this criminal referral?

A I believe I had a conversation with Mr. Banks prior to this time, and I don't recall ever talking to Mr. Dodson and don't really know what others on my staff may have said to him, so I just don't know.

Q Other than your responding to Mr. Raphaelson's inquiry with your E-mail, do you recall any other contacts with anyone in the Department of Justice between the time of your October 7 urgent memorandum, urgent report memorandum, and the October 20 urgent report memorandum on this subject?

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A I believe someone in the criminal division had asked for a copy of it.
Q Do you recall who that was?
A I have a vague recollection that Zipperstein, an assistant from LA, who was either in town -- he was in town to do something with the S&L cases. I believe he called and asked for a copy.
Q Do you recall when that occurred?
A It would have been the day after it went up.
Q And how would Mr. Zipperstein have been aware of the referral?
A I don't know. I would guess that someone in the criminal division would have asked him. He may have been in charge of the fraud section at the time.
Q Do you know whether he was given a copy of the referral?
A I don't know for sure, but I'd be real surprised if he wasn't. You know, I assume he would have been.
Q Did his request come to you or how did you

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learn of it?
A I just don't know. He may have called me. That's the impression I have, but it's -- I don't know that for sure.
Q Do you know what his purpose was in requesting a copy of the referral?
A No. At the time he was -- I believe he was head of the fraud section or had some other responsibility for savings and loan matters, and he was a person that ought to have it, I believe.
Q So your recollection is you earlier said that he was an Assistant U.S. Attorney from LA.
A He was on detail in the department.
Q And so was he in the criminal division then, reporting to Mr. Mueller?
A I think so.
Q Do you have any knowledge as to what the criminal division may have done after receiving the memorandum and after Mr. Zipperstein requested a copy?
A No, I don't have any idea.
Q Your October 7 memorandum copied

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Mr. McNulty who is indicated to be the director of Office of Policy and Communications. Why was he copied on the urgent report memorandum?

A I think at this time it was normal for him to be copied on it. I believe that someone in the Executive Secretariat either told us to do that or normally copied him.

Q Did you have any discussions with Mr. McNulty about your memorandum or the referral?

A No.

Q Are you aware of whether anyone in your office had any contact with his office on this matter?

A I'm not aware, and it would be unusual, I think.

Q Can you recall anything else that occurred with respect to this referral other than the request from Mr. Zipperstein that you've testified to prior to your October 20 memorandum circulating Mr. Banks's letter to Mr. Pettus?

A No.

Q And can you recall how you came to receive

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Mr. Banks's letter from Mr. Pettus -- I'm sorry, Mr. Banks's letter to Mr. Pettus?

(Pause.)

MR. COLE: Could you reread the question, please?

(The reporter read the record as requested.)

THE WITNESS: I don't recall specifically how it would have come. I don't recall how I got it. Normally it would -- as an urgent report or follow-up, it would come to the Office of Legal Counsel in my office and they would prepare the transmittal and bring it to me for signature.

BY MR. COLE:

Q Did you have any discussions with Mr. Banks about this letter?

A I don't recall any discussions with him, no.

Q Are you aware of whether anyone on your staff had any discussions with him?

A I'm not aware.

Q Are you aware of whether anyone else at the Department of Justice had any discussions with

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Mr. Banks about his letter?
A I don't have any knowledge of that.
Q And with regard to Mr. Dodson, did you have any discussion with him about Mr. Banks's letter?
A I don't believe I ever talked to him about this matter.
Q And are you aware of whether others in either your department or elsewhere in the Department of Justice discussed it with Mr. Dodson?
A No. I have no knowledge of any other discussions, if there were any.
Q And do you have any further knowledge of events relating to this criminal referral subsequent to your October 20 memorandum, events concerning the Department of Justice? I realize there are public reports of events concerning this referral.
A Not that I recall. I left the executive office in late October of this year. I think it was October 23, 1992.
Q So that would have been only three days after your memorandum; is that correct?
A Yes.

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Q And at that time did you go to the position that you currently hold?
A I was put on administrative leave for -- and went to my current position in January of '93.
Q And what was the reason for the administrative leave?
MR. SGRO: I don't think that that's relevant to this inquiry, is it?
BY MR. COLE:
Q Let me rephrase the question, then. Did the administrative --
MR. SGRO: Off the record a second.
(Discussion off the record.)
BY MR. COLE:
Q Back on the record. If I could rephrase the question, Mr. McWhorter, was your administrative leave related in any way to the matters that you've been testifying about here this morning?
A No.
Q Thank you. And is it your testimony, then, from that time forward until today, you've had no further involvement with or knowledge of the handling

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of this referral by the Department of Justice?
A I've had no involvement with it. My friends may have said something about Whitewater to me, but I don't remember anything specific. I have a vague knowledge of an issue about recusal, but I don't know anything about that, Mr. Banks's recusal.
Q And you had no personal involvement --
A None.
Q -- with that issue?
A No.
MR. COLE: I think I would like to request, and I can follow this up with a letter if it would be helpful, that you review whatever records there are of your telephone calls from this time, any calendars or personal schedules you have and any department time sheets, and perhaps whatever is available for the period of the month preceding your October 7, 1992 memorandum, perhaps from September 1 through October 7, if you could produce those records to the committee.
MR. SGRO: I don't think there's a problem with reviewing the September calendars and phone

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records.
THE WITNESS: If I can find them.
MR. SGRO: Anything that's responsive we will produce as soon as we receive it.
MR. COLE: Thank you.
MR. BEN-VENISTE: The steno notes, do you have those?
MR. SGRO: Steno notes?
MR. BEN-VENISTE: Steno notebook.
THE WITNESS: I don't think there's anything in there about this matter.
MR. BEN-VENISTE: Who has it?
THE WITNESS: I would have it. If I still have it, it was a log of telephone calls.
MR. BEN-VENISTE: Off the record.
(Discussion off the record.)
(Recess.)
BY MR. COLE:
Q Mr. McWhorter, before we took a break you mentioned that you had some recollection of hearing something about Mr. Banks's recusal. Can you describe in any more detail what you heard about

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that?
A Not really. I just generally was aware through conversations with former colleagues, and I don't remember who, that he had -- there was some issue about whether or not he should be recused. And I don't recall what the issue was, but that's --
Q Do you recall from whom you heard that?
A No, I don't.
Q Is your office or the office that you had at that time normally involved in recusal issues?
A Yes. Frequently we were involved in -- when the U.S. Attorney needed or wanted to be recused, in processing it in the department, meaning notifying appropriate offices who would have some likely -- be impacted by it somehow, and also in determining who does the work if there is a recusal. And frequently, we would try to shop for a U.S. Attorney or Senior Assistant U.S. Attorney in a nearby district. Sometimes the criminal division would do it, if -- and there is no set way to decide.
My recollection is that if the criminal

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division handled such a recusal, they wanted their expenses paid, so we frequently wanted a nearby Assistant U.S. Attorney to do it because of the money.
Q And do you have any recollection as to what role, if any, your office played in the Banks recusal consideration?
A I don't know. I was not involved and don't remember specifically any of the issues involved.
Q Do you recall how long that was after your October 20 memorandum when that issue came up?
A No.
Q Do you recall any other feedback or reaction from inside the department to your October 20 memorandum attaching Mr. Banks's letter?
A I don't recall receiving anything back and I was gone shortly thereafter. So I don't believe there was any contact with me about it.
Q And what about after you returned from your leave, did you have any further involvement in the matter?
A No. I was reassigned to the U.S. Trustee

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program.
Q So after returning from leave you were not reassigned to the Executive Office of U.S. Attorneys; is that correct?
A That's correct.
Q A final question about your discussions with Mr. Banks. You testified earlier that you believe that Mr. Banks thought that the RTC referral was, I noted your words, "preliminary and not thorough," and that more work needed to be done by the FBI to determine whether it was appropriate for criminal investigation, if I'm recalling your testimony correctly.
Can you recall what Mr. Banks said to you to give you that impression?
A Not specifically, no. I just -- that's my impression of the conversation.
Q But you do recall that it was a conversation with Mr. Banks?
A I think it was. That's what I think.
Q Was that conversation before or after you received Mr. Banks's letter to Mr. Pettus of

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October 6?
A I think it was before the first urgent report, that conversation.
Q Was there more than one conversation with Mr. Banks before the first urgent report memorandum?
A I don't recall -- I don't recall the specific conversation. I just -- I believe there was one conversation before this, sometime before the urgent report came in, but I could be mistaken.
Q The reason I ask the question, to try to be as clear as possible, is I believe when you first testified, you indicated that you had a conversation with Mr. Banks where he told you that he was expecting a referral from the Resolution Trust Corporation and then this subsequent conversation would appear to have been after Mr. Banks had received and reviewed the referral. That's the source of my confusion, and perhaps you could clarify that.
A I believe that my conversation with Mr. Banks was before he had a written referral from the RTC. I believe he had been advised that he was

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expecting to receive a written report. And I don't recall any other conversations with him. I may have, but I just don't recall any others.

Q And so is it your best recollection that that would have been the conversation in which you got the impression from Mr. Banks that the referral was not thorough and preliminary?

A Yes.

Q And so do you know how Mr. Banks would have come to that view if he had not yet received the referral?

A I don't know. It's likely that he had had conversations with someone in the RTC before actually getting the writing, but I just don't know.

Q Did he tell you that he had had conversations with someone in the RTC?

A I don't recall. That's my impression of what our conversation was. I don't recall where he got the information or how I came to have that impression. That's just my impression, that he did not yet have a writing and he must have had conversations with someone.

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Q And the further work that Mr. Banks thought needed to be done or you understood he thought needed to be done, was it your understanding that work was to be done by the FBI?

A That would be our normal -- that would be the normal practice with a criminal referral from a regulatory agency, to have the FBI do the work. Sometime in this time frame, the regulatory agencies had very few criminal investigators and we're talking on one hand, possibly two hands, the number of criminal investigators in all of those agencies.

Now, by '92 they may have had more, but the department's experience with the work of many of the regulatory agents who prepared reports, they weren't adequate for a criminal -- as a predicate for a criminal investigation. And the FBI was needed and the memorandum of understanding, I believe, with the agencies required the FBI to do the investigation once a criminal matter was referred.

Now, there was a lot of controversy about what a criminal referral was in the months preceding this time frame. The agencies had said to Congress

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that they had referred thousands of criminal -- made thousands of criminal referrals and the department didn't have thousands of criminal referrals that we could locate. So what a criminal referral was depended on who was using the term, I believe, at this time.

Q Were criminal referrals ever sent back to the RTC for more work internally?

A I don't know. I didn't have any involvement with them myself specifically. The substance of investigations are -- what the Assistant U.S. Attorneys or fraud section attorneys did with them, I didn't have any involvement with that.

Q Did you discuss with Mr. Banks what you just described as a normal practice for the FBI to do further work on a referral?

A I don't recall. I don't recall.

Q You don't recall. Do you recall anything further about your discussions with Mr. Banks?

A No, no.

Q Did the FBI do follow-up work on every criminal referral that the department received from

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the RTC?

A That's my understanding. I believe so. At least for -- now, there was a time when they were overwhelming, the numbers, but I believe the memorandum of understandings they had with the various regulatory agencies required the criminal referral to be made to the FBI and the FBI to do any further investigation that was needed.

Q If I could show you one more document that's numbered 7192.

(Witness reviewed the document.)

I'm only showing you that because it appears to have a Post-it note copied on the front of it that says "Red, RTC referral." Do you know who Red is, or R-E-D?

A I don't know, and it doesn't look like the R down below, so it could be Les.

Q But you don't recognize it?

A I don't recognize the handwriting at all.

Q Thank you. A final point on the FBI review of criminal referrals that you just testified to. Was it at the discretion of the FBI whether work

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would be done on a criminal referral once it was received from the RTC?

A That's a bigger answer than the question, and it has a long history. The short answer is yes.

The long answer is the FBI -- whether or not the Assistant U.S. Attorneys direct FBI investigations has been an issue, if it comes up, for decades. Normally FBI -- in this time frame, the FBI would normally investigate anything the U.S. Attorney requested, although they would, I'm sure, maintain their right to say no, that we're the investigator and you're the prosecutor and you don't tell us what to do, but it worked -- it normally worked in harmony and cooperation.

That may not be the question you were asking.

Q Well, could you clarify -- I believe you testified earlier that the memoranda of understanding that the FBI had with the various agencies required that the referrals go to the FBI for investigation.

A That's what I think. I don't know that for sure. It's my impression.

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Q Perhaps it would help if for the record you could describe what the standard or normal operating procedure was inside the Department of Justice, by which I mean to include the FBI, for handling of criminal referral for a failed savings and loan from the Resolution Trust Corporation.

A I'm not sure what the normal was and whether or not it was changed when the special counsel handling savings and loan matters was created.

Q Would that be Mr. Raphaelson?

A I think Jim Richmond was his predecessor.

Q But it was the office of Mr. Raphaelson?

A It was Ira's office. I think they changed it, but I don't know that for sure, because I think in practice, the regulatory agencies or agents would send them through their channels, either to the U.S. Attorney or the FBI, depending on who it was, and the U.S. Attorney, I believe, would -- if they received one, would normally refer it, send it to the FBI.

Q And who had responsibility for determining whether the referral had merit, it should be pursued

further by the office? Was it the FBI or the U.S. Attorney?

A It's both. The U.S. Attorney's responsibility was to make the ultimate prosecutive determination as to whether or not the matter had merit. The FBI also could investigate if they wanted to, and frequently did. They would also frequently ask an Assistant U.S. Attorney for a prosecutive opinion and ask whether or not they should do further investigation.

MR. COLE: Thank you. I don't have any further questions.

MS. FISHER: Nothing. Thanks so much for coming in.

THE WITNESS: Sure.

(Whereupon, at 10:52 a.m., the deposition was concluded.)

LAURENCE S. MC WHORTER

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Carmen Bunch

Notary Public in and for the
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